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Supreme Court, U.S.
FILED
APR 14 1998
OFFICE OF THE CLERK

No. 981672

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

ROBERT E. MEADE,

Petitioner,

vs.

PEP BOYS MANNY MOE & JACK, INC., ET AL,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

ROBERT E. MEADE
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38 pp

QUESTIONS PRESENTED

Whether the trial court below abuse its discretion when it forced the injured party into accepting a settlement which did not justly compensate him for his injury?

Whether the trial court below erred in dismissing a case because the claimant failed to personally appear for trial when his attorney was present and ready to proceed with the trial?

PARTIES TO THE PROCEEDING

The parties to the proceeding below were the petitioner and plaintiff Robert E. Meade, and the respondents and defendants Peps Boys, Manny, Moe & Jack, et al. This includes Pep Boys, Manny, Moe & Jack and their insurer, Travelers Indemnity Company of Illinois (Manor Care).

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PETITION FOR WRIT OF CERTIORARI

Petitioner Robert E. Meade respectfully requests that a writ of certiorari issue to review the order of the Court of Appeals of Maryland.

OPINIONS BELOW

The Court of Appeals of Maryland issued an Order denying reconsideration of petition and is reprinted herein on page A. The Court of Appeals of Maryland issued an Order denying petition and is reprinted herein on page B. The Court of Special Appeals of Maryland issued an Order denying reconsideration of decision to affirm and is reprinted herein on page C. The Unreported Opinion of the Court of Special Appeals to affirm is reprinted herein on page D. The Circuit Court of Maryland for Prince George's County issued an Order denying reconsideration of decision to dismiss and is reprinted herein on page E. The Circuit Court of Maryland for Prince George's County issued an Order granting Motion To Dismiss and is reprinted herein on page F. The Workers' Compensation Commission issued an Order disallowing claim and is reprinted herein on page G.

JURISDICTION

The Order of the Court of Appeals of Maryland denying the petition was entered on November 13, 1998. The reconsideration of the Order of the Court of Appeals of Maryland was denied on January 14, 1999. The jurisdiction of the United States Supreme Court to review the Order is invoked under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

Robert E. Meade filed a claim with the Workmen's Compensation Commission for a back injury sustained while in the course of his employment. On September 12, 1993, he slipped off a pallet jack when he and three other employees were lifting an engine into a customer's van and he felt a sharp pain in his back. The Commission denied the claim. In 1994, Meade, feeling aggrieved of the decision of the Workmen's Compensation Commission, filed a petition for judicial review in the Circuit Court for Prince George's County.

On September 5, 1994, Mr. Stephen Kiefert, Meade's former counsel, Mr. Stan Haynes, respondents' counsel, and Judge Sothoron signed a proposed settlement offer which was typed as a court order without Meade's knowledge or approval. Meade was told that Haynes and his client, Jean Miller of Travelers Insurance Co., encouraged this settlement offer, even though , they knew that Kiefert could not finalize a settlement without Meade's approval. Meade did not accept the settlement offer that had been signed because it did not include leaving his back injury open, since more testing, more treatment, and additional prescriptions for nerve damage were needed. It also would have required Meade to release Pep Boys and its insurer from civil rights claims which Meade was unable to do since Meade had already negotiated agreements with other attorneys.

Trial was scheduled for September 9, 1996. Kiefert instructed Meade to call him at the Court library to see if his presence was required so he could travel to the courthouse. If a continuance was denied, Kiefert would have proceeded by asking for sanction hearings on subpoena information and interrogatories. The Court had not ruled on Kiefert's Motion for Sanctions, which he had previously placed before the Court. He would also argue for a twelve person jury instead

of a six person jury, and present the Court with a list of potential witnesses which needed to be scheduled for the proposed three day trial. On suggestion of Defendants' counsel, another judge was sought out to hear the case that day. Judge Sherrie Krauser proceeded and denied Kiefert's request for a continuance but did not begin the trial. Instead of allowing Kiefert to start, as he had prepared, Judge Krauser chose to proceed with a discussion of the settlement offer which had been rejected by Meade. She emphasized the reasonableness of the settlement and was unmoved when Kiefert disagreed with her. She unexpectedly ruled that it would be put on a 30 day disposition for a settlement to be reached and signed by Meade. When 30 days had passed, the employer/insurer, having failed to force Meade to accept the settlement, moved to dismiss Meade's case on the basis that he did not appear for trial.

On January 9, 1997, a hearing was held. Meade believed the issue was the settlement offer of September 5, 1996 and he would be allowed to speak as to why he had rejected the settlement offer and present his own settlement offer. Kiefert told Meade, prior to this hearing, that this would be an informal hearing. Also, Judge Krauser's office told Meade by telephone that it was going to be an informal hearing when Meade spoke to Judge Krauser and her legal assistant at the end of November 1997. When Meade tried to interrupt the proceedings to question what was going on, Judge Krauser cut him off, did not let him speak further, pointed out that he was represented, and threatened him with contempt. Because the parties had failed to resolve what the Court requested, Judge Krauser took it upon herself to resolve the issues of the rejected settlement by finding against Meade on the issue of the prescription on the basis of the judge's own experience with allergy medicine and against Meade on the issue of front pay because she reasoned, Meade's failure to appear on September 9, 1996 had waived any right he had to future benefits. Since the

original settlement remained unchanged, Meade rejected the settlement since it would not fully compensate him for additional medical expenses resulting from the injury. Also, it still required Meade to release Pep Boys and its insurer from civil rights claims. Judge Krauser forced Meade to choose between either accepting the settlement offer of September 5, 1996, which he had already rejected on September 6, 1996 or have his case dismissed. Judge Krauser did not once state to Meade why this was occurring, leaving Meade to think the reason was because of him not accepting the settlement offer of September 5, 1996. Meade only found out why his case was dismissed on May 22, 1997. As a result of Meade not accepting the settlement, Judge Krauser dismissed the case.

On May 22, 1997, Meade appeared before Judge Krauser on his Motion to Reconsider, which he filed pro se. She explained for the first time that she had imposed a sanction on Meade for not being present on September 9, 1996. She stated that she had sanctioned him on January 9, 1997 to accept the settlement offer or have his case dismissed. Judge Krauser determined that unless Meade immediately produced an affidavit from his employer verifying that he needed to be absent from the September 9, 1996 hearing, she would grant no relief, even though the Court had never before requested an affidavit from Meade. When Meade did not produce the affidavit, Judge Krauser was unwilling to hear any evidence Meade might present as his reasons for not being present on September 9, 1996. Judge Krauser denied the Motion To Reconsider.

REASONS FOR GRANTING THE PETITION

Meade appealed to the circuit court from his denial by the Workmen's Compensation Commission of a back injury claim he filed. Appeals from the Commission to the

circuit court are conducted essentially as trials de novo. "Maryland, in common with sixteen other states, authorizes a review of the facts as well as the law. Our statutes contemplates a trial which essentially is de novo". Richardson v. Home Mutual Ins. Co. 235 Life Md. 252, 201 A 2d 390 (1964). The burden is upon the appellant to overcome the presumption that the decision of the Commission was correct.

> "Presumption of correctness of Commission's decision may be overcome by submitting new evidence, by relying on all or a part of record before Workmen's Compensation Commission, by argument as to probative value of evidence and by argument as to the credibility of witnesses, and all of such matters are legitimate elements of a trial de novo which counsel may exercise to fullest legitimate means to overcome existing presumption". Abell v. Albert F. Goetz, Inc. 226 A 2d 253, 245 Md. 433.

Meade's counsel, Kiefert, had to prove that the Commission's decision was incorrect. Judge Krauser should have given Kiefert the opportunity to meet his burden of proof before she reached any decision in this case. Judge Krauser failed to recognize that Kiefert never said that he would not go forward with the case in Meade's absence, and that Kiefert had both fact and expert witnesses he could have presented to the Court if he had been given the opportunity. Kiefert was not allowed by the Court to proceed. There are numerous claims which are denied by the Workmen's Compensation Commission and yet have a recourse, file for judicial review in the circuit courts. By Maryland Code, Article 101, Section 56, "The court shall determine whether the Commission has justly considered all the facts concerning the injury". Because the appeal is de novo, the jury is the fact-finder. The jury is free to review the record and judge the credibility of the witnesses. It has been known to reach entirely opposite conclusions which would justly

compensate the injured employee as in Wesco Elec. Co. v. Shook, 143 Colo. 382, 353 P 2d 743. The court held that it was improper for compensation to be denied, and benefits were awarded. Also, as in Allen v. Great Atlantic & Pacific Tea Co., Inc. 48 A.D. 2d 984, 369 N.Y.S. 2d 572 (1975) where the court reversed the denial of benefits. Judge Krauser should have allowed Meade to have a trial by jury, which he had asked for from the beginning of his case. Kiefert would have been able to provide legally sufficient evidence to meet his burden of proof and have the jury decide his case. He would have proven that Meade did in fact sustain a back injury at Pep Boys and it would have been clear that Meade definitely falls into the Maryland Workmen's Compensation Act which provides benefits to persons who suffer "accidental injury that arises out of and in the course of employment". The circuit court did not perform its duty in determining whether the Commission's decision was supported by substantial evidence. "When reviewing factual findings of administrative agencies, it is court's duty to determine whether agency's decision was supported by substantial evidence". Eberle v. Baltimore County 103 Md. App 160 (1995) 652 A 2d 1175. Instead, the court prevented the case from ever being heard by dismissing it. The court's decision infringed the statutory recourse one has and denied Meade his day in court. The Supreme Court should allow Meade to have the statutory recourse that other injured parties have.

This court needs to resolve some issues that have been raised by this petition. There is no case law, statute or rule of court which permits a trial court to dismiss a case simply because the plaintiff is not physically present when the case was called but his attorney was present and ready to proceed with trial. Rules of court that permit a judgment by default against a defendant who fails to defend, Md. Rule 3-509(a), or dismissal for a plaintiff's failure to show a willingness to

prosecute after one year following the last docket entry, Md. Rule2-507(c), are simply not applicable to the case of a plaintiff who is represented by counsel but who fails to appear when the case was called. No statute deals with this situation, and there is no Maryland case law which approves a trial court's decision to dismiss a case in these circumstances. The trial court erred in concluding that Meade's failure to be personally present when his case was called either required or permitted the court to dismiss the case. After its decision to deny Kiefert's request for a continuance, the court should have begun proceeding on the outstanding pretrial motions, impaneled a jury, and proceeded with trial. It is clear that a party has a right to voluntarily absent themselves from trial, and be represented solely by counsel without dismissal of their case, and that trial may proceed in that party's absence. Chapman v. Avco Financial Services Leasing Company, 387 S.E. 2d 391, 392 (Ga. 1989); Cavanaugh v. Cardamone, 383 N.W. 2d 601, 603 (Mich. App. 1985); Williams v. Bolding, 452 N.E. 2d 1346, 1348 (Ohio App. 1982); Estate of Letches, 398 N.E. 2d at 1047 and n.5; Carlisle v. County of Nassau, 408 N.Y.S. 2d at 116; Vines v. Vines, 357 So. 2d at 246; Rueth v. Idaho, 596 P 2d at 78-79.

The Supreme Court must evaluate the role of the lower courts in settling a case. There are numerous cases where the litigants are offered pretrial settlements. Each litigant must determine if the settlement is right for him and be the only one that can make the decision whether to accept a settlement offer. A litigant must not be denied this right and be forced by a judge to accept a settlement offer, which does not fairly compensate him, or have his case dismissed. Other injured employees will be affected because of the impact it will have on their legal rights.

> "Under Maryland law, a trial court does not have the plenary power to force parties to engage in mandatory, binding alternative dispute

> resolution, no matter how desirable the court might consider settlement to be". Attorney General v. Johnson, 282 Md. 274, 439 U.S. 805 (1978).

Yet in Meade's case, the court took it upon itself to resolve what the court must have considered to be minor differences standing in the way of settlement. It found against Meade on the issue of the prescriptions on the basis of the judge's own experience with allergy medicine and against Meade on any right he had to future benefits. The law is clear that a lawyer has no implied authority to settle a lawsuit on behalf of his client. A judge should be bound by the same law. The judge in Meade's case forced him into accepting a settlement offer or have his case dismissed. This settlement dispute should have been solely in the hands of the parties. Unlike in certain special situations in which the trial court is required by statute or rule to approve and find that the settlement is fair. The three most prevalent examples of this are class action settlements, shareholder suit settlements, and compromises of claims in bankruptcy court. 15 U.S.C.A. 16(e) (West Supp.1979).

The Supreme Court should find as did the court in Schunk v Schunk 446 N.Y.S 2d 672

> "Pressure tactics to coerce settlement simply are not permissable" "in view of the pressure the trial court had exerted on the parties to reach settlement, trial court's order directing the parties to proceed with settlement after wife learned that she could not comply with the terms of the settlement had to be vacated and the stipulation rescinded. Order reversed".

Also, the Supreme Court should find as did the court in Mitchell v. Iowa Cab Co. 31 A.D. 2d 519, 294 N.Y.S. 2d 749 "The courts efforts should not serve as a lever to exert undue pressure on litigants to oblige them to settle their controversies without their day in court". Further, the

Supreme Court should contend, as did the court in Kothe v Smith 771 F2d 667 (2d. Cir. 1995), that "Although the law favors the voluntary settlement of civil suits...it does not sanction efforts by trial judges to effect settlements through coercion". It should find that

> "To penalize plaintiff by revoking a preference theretofore granted following her failure to accept an offer consequent on a pretrial exploration of the possibility of settlement constitutes a gross abuse of discretion". Wolff v. Laverne, Inc. 17 A.D. 2d 213, 233 N.Y.S 2d 555.

While the inherent power to dismiss for failure to abide by court orders clearly lies with Maryland's trial courts, "it is appropriately exercised only with restraint. Against this power...must be weighed the sound public policy of deciding cases on their merits". Hillig v CIR, 916 F.2d 171, 173-74 (4th Cir. 1990) (citation omitted). Judge Krauser could have imposed a less drastic sanction on Meade which would have been more appropriate and still allow him to have a trial by jury as he had requested from the beginning of his case. It would have been in the interest of justice to allow this case to proceed. "The functions of courts is to provide litigants with an opportunity to air their differences at an impartial trial according to the law". Wolff v. Laverne, Inc., 17 A.D. 2d 213, 214, 233 N.Y.S. 2d. 555. There is nothing on record or in Judge Krauser's order to show that she contemplated any sanctions but the most severe one.

> ". the harshness of the sanction imposed requires that the district judge first contemplate less drastic measure". ".a district court cannot impose the extreme sanction of dismissal unless the court judge first finds that a lesser sanction would not have served the interests of justice. A silent record is inadequate. We shall not infer that the district judge weighed alternative

> sanctions, he must have expressly considered them". S.E.C. v. First Houston Capital Resources Fund Inc., 979 F 2d 382, 383.

Judge Krauser did not provide factual findings or make conclusions that a lesser sanction would be insufficient in Meade's case.

Meade asks that the Supreme Court find that the circuit court abused its discretion when it failed to apply sanctions less severe than dismissal and further find that the Court of Special Appeals failed to clearly state sufficient reasons and grounds as to why it came to its decision to affirm.

> "Very sound reasons should be required to refuse a party the benefits of an appeal; and any interference with the right, wherever it exists, must be upon strong rounds and a clear manifestation on the part of the legislature, that they designed to withdraw it". Williams v. Willlams 7 Gil 302, at 304.

In the unreported opinion by the Court of Special Appeals, Judge Alpert cites Zdravkovich v Bell Atlantic-Trico Leasing Corp., 323 Md. 200, 208 (1991) (where both plaintiff and his counsel failed to appear for trial..) Meade's case differs from this case because in his case, the plaintiff's attorney was present when the case was called. Judge Alpert states that the court dismissed the case not because Meade was not present but because, due to Meade's absence, Kiefert could not prosecute the case. Judge Alpert, as did Judge Krauser, wrongfully concluded that Kiefert could not prosecute the case without Meade's presence at the beginning of the trial. Kiefert was prepared to proceed if the continuance was denied.

The Court of Special Appeals did not provide Meade with a fair proceeding where the judge's impartiality might be reasonably questioned. It appointed Judge Krauser, the circuit court judge who decided Meade's case, to hear some

cases in the Court of Special Appeals at the same time Meade's case (No.1562, September Term, 1997) was before them. The reported opinion in the Court of Special Appeals of Maryland of the case Jacklyn Kay Heineman, et al. v. Julie W. Bright, et al. (No. 1557, September Term, 1997) was written by her. One of the judges who worked with her, Judge Davis, was present to decide Meade's appeal. This impaired the fairness of the proceedings and may have required the judge's recusal.

In summary, the courts should not take away a person's right to be heard and to reject a settlement if it only benefits the employer, Pep Boys, and its insurance co., Travelers, and does not fully compensate the injured party. There is a grave injustice in the Court's action, responding favorably to respondents' settlement and never allowing Meade to present his settlement offer. Meade was denied presenting his settlement on various occasions. The trial judge's main procedural function is to guarantee a "fair trial" not to settle cases. By forcing the respondents' settlement, the Court substantially helped the respondents and became partial to them. The court system is designed to guarantee just trials, which require the impartiality of the trial judge. We must see to it that corporations, such as Pep Boys, and insurance companies, such as Travelers, offer the injured party just reimbursement in Workmen's Compensation cases and not influence the court systems to force their unjust settlement offers or have their case dismissed without giving it to a jury. The public interest here is to see that the court system is not persuaded by either party in a litigation.

CONCLUSION

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

A

ROBERT E. MEADE	*	IN THE
		COURT OF APPEALS
v.	*	
		OF MARYLAND
PEP BOYS, MANNY, MOE and JACK et al.	*	Petition Docket No. 438
	*	September Term, 1998 (No. 1562, Sept. Term, 1997, Court of Special Appeals)

ORDER

The Court having considered the motion for reconsideration, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the motion be, and it is hereby, denied.

/s/ Robert M. Bell
Chief Judge

Date: JAN 14 1999

ROBERT E. MEADE	*	IN THE
		COURT OF APPEALS
v.	*	
		OF MARYLAND
PEP BOYS, MANNY, MOE and JACK et al.	*	Petition Docket No. 438
	*	September Term, 1998 (No. 1562, Sept. Term, 1997, Court of Special Appeals)

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the motion to stay the enforcement of the mandate, the supplements,and the answers filed thereto, in the above entitled case, it is reconsideration , in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition, motion and supplements be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

Date: NOV 13 1998

C

MANDATE

Court of Special Appeals

No. 1562, September Term, 1997

Robert E. Meade
vs.
Pep Boys Manny Moe & Jack, Inc. et al.

JUDGMENT: June 8, 1998:Unreported Opinion by Alpert, J.
Judgment affirmed; appellant to pay the costs.

July 8, 1998: Motion for Reconsideration
filed by appellant.

September 1, 1998:Motion for
Reconsideration denied.

September 2, 1998: Mandate issued.

STATEMENT OF COSTS:

In Circuit Court: for PRINCE GEORGE'S COUNTY
CAL9405930

Record	60.00
Stenographer Costs	.100.00
Total	160.00 *

In Court of Special Appeals:

Filing Record on Appeal	50.00
Printing Brief for Appellant	75.60
Portion of Record Extract—Apellant	424.80
Total	550.40
Printing Brief for Appellee	136.80
* Total*	136.80

September 98 Leslie D. Gradet

D

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1562

September Term, 1997

ROBERT E. MEADE

v.

PEP BOYS, MANNY, MOE & JACK, INC., et al.

Davis,
Byrnes,
Alpert, Paul E.
(Ret., specially assigned),
JJ.

Opinion by Alpert, J.

Filed: June 8, 1998

#CAL9405930

In this appeal, appellant Robert E. Meade attempts to resurrect his workers' compensation claim against appellees Pep Boys, Manny, Moe, & Jack, Inc. and Travelers Indemnity Company of Illinois. The Workers'Compensation Commission denied Meade's claim, and the Circuit Court for Prince George's County dismissed, with prejudice, his appeal from that denial. On appeal to this Court, Meade argues, in essence, that:

> The trial court erred in dismissing his appeal on the basis that he did not personally appear for trial, since his attorney did appear.

We find no merit in this argument and shall affirm the judgment of the trial court.

FACTS

The record reflects that, just after the case was called on September 9, 1996, Meade's trial counsel, Stephen H. Kiefert, stated: "The plaintiff is moving to continue at this time." Kiefert explained that Meade

> works for the Defense Department. His is tied up with this Iraq business. He's been working around

> the clock at a place he can't tell me about doing what he can't tell me about. They've been sleeping on cots and ordering pizzas. He can't be here for national security reasons. He's been ordered to stay there.
>
> I got a phone message – I checked my messages this morning. He was home between 8:00 and 9:00 last night. They let him go home to shower and change occasionally, but other than that, for national security reasons, he has been ordered not to be here. All leaves have been canceled.

Kiefert added: "I'm not allowed to have his phone number so I can't call him at work."

The court heard argument from defense counsel to the effect that Meade had already requested and been granted several continuances for different reasons and that he had failed to appear for a settlement conference several days before trial despite a court order that he do so. Defense counsel pointed out that Meade had rejected a settlement offer presented to Kiefert at the conference even though the offer was "basically consistent with the demand. . ." The court then denied the request for a continuance. It told Kiefert: "I'm telling you he has failed to appear today. He's

had two prior continuances in this case. I cannot grant a third continuance without an affidavit saying it is for national security reasons." [1]

After further discussion with counsel for both parties regarding the proposed settlement and Meade's reasons for rejecting it, the court stated:

> I will tell you what I am going to do. I will put this on a 30 days disposition. If you do not have a disposition in 30 days, you have - you either have him sign {the proposed settlement} or the case will be dismissed for his failure to appear. That's it. That's it. His demand was for $10,000. This is in excess of that.

The court added:

> Now, I will leave it open for settlement only. If you all renegotiate on some fine points about this thing on the outstanding medicals as being not taken care of and if that means you come down a fraction on the other costs, then that's how you work it but I don't know. You all have to negotiate this.

Meade did not accept the settlement offer within 30 days and the appellees filed a written motion to dismiss the case. On January 9, 1997, a hearing was held and both Meade and Kiefert were present. The court offered Meade

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[1] See Md. Rule 2-508 (c) ("A motion for a continuance on the ground that a necessary witness is absent shall be supported by an affidavit. .").

the option of accepting the settlement offer at that time, but Meade rejected it. In accordance with Kiefert's explanation on September 9, 1996, Meade told the court that he failed to appear for the pre-trial settlement conference and the trial itself because "{w}e had an international crisis at that time {that} I'm not supposed to discuss and I couldn't make it." Meade explained that he was nevertheless in contact with Kiefert during the week before trial. The court then dismissed the case with prejudice. It signed an order stating:

> This case having been called for trial on September 9, 1996, and the Claimant Robert Meade, having failed to appear, and having failed to comply with this Court's instructions on September 9, 1996 {to attempt to reach a settlement,}
>
> It is this 9th day of January, 1997 ORDERED that the Motion to Dismiss filed by the Employer and Insurer be, and it is hereby GRANTED, and the Claimant's appeal from the decision of the Workers' Compensation Commission is dismissed.

Meade filed motions for reconsideration and for a new trial, and a hearing was held on May 22, 1997. This time, Meade appeared pro se. Significantly, in denying the

motions the court explained that it had dismissed the case "for failure to prosecute, in other words, for the failure of the Plaintiff to appear for trial."

DISCUSSION

In arguing that the trial court dismissed his appeal simply because he was not personally present, Meade mischaracterizes the record. Despite the court's references, at the various court proceedings and in the order of dismissal, to Meade's failure to appear for trial on September 9, 1996, it is clear that the court dismissed the case not because Meade was not present but because, due to Meade's absence, Kiefert was unable to prosecute the case. At the hearing on Meade's motions for reconsideration and for a new trial, the court expressly clarified that, when it referred to Meade's failure to appear, it was in fact referring to his inability to prosecute. While a better choice of shorthand might have been advisable, the court's shorthand was not unduly confusing under the circumstances.

Because of his mischaracterization of the record,

Meade's brief focuses on the propriety of dismissing a case when the plaintiff is absent but his or her attorney is not. Meade does not question whether the trial court erred in refusing to grant the continuance or in determining that Meade's counsel could not prosecute the case. Consequently, those arguments are not before this Court. See generally Md. Rule 8-504 (a).

Any such arguments would be without merit, moreover. "{T}he granting of a continuance is in the discretion of the court, and will not be reviewed on appeal unless the court acts arbitrarily and prejudicially." Dart Drug Corp. v. Hechinger Co., 272 Md. 15, 28 (1974). When a continuance is requested because of an absent witness – in this case, Meade - - Md. Rule 2-508(c) requires that an affidavit be filed to explain, essentially, the reason for the witness' absence and the importance of his testimony. Meade failed to supply such an affidavit and failed to so much as suggest that it was not possible for him to do so.

Absent the granting of a continuance, it was

incumbent upon Meade's counsel, Kiefert, to prosecute the case. Cf. Zdravkovich v. Bell Atlantic-Trico Leasing Corp., 323 Md. 200, 208 (1991) (where both plaintiff and his counsel failed to appear for trial, court could properly grant judgment in favor of defendant based on plaintiff's failure to prove a prima facie case). There is no dispute that, in appealing from the decision of the Worker's Compensation Commission, Meade was seeking an essential trial de novo. See generally Md. Labor. & Empl. Code Ann. S 9-745 (1991 Repl. Vol.); S.B. Thomas, Inc. v. Thompson, 114 Md. App. 357, 364-67 (1997); Chadderton v. M.A. Bongivonni, Inc., 101 Md. App. 472, 480-81 (1994). Although Meade asserts on appeal that Kiefert was prepared to proceed in his absence, his attorney made no such representation to the court below. Kiefert flatly informed the court that a continuance was necessary because Meade could not possibly be present - indeed, Kiefert did not even have a telephone number so that he could contact Meade. No witnesses for Meade were present when the case was called

and, upon the court's refusal to grant a continuance, Kiefert gave no indication that he had evidence to present other than Meade's testimony. Under the circumstances, the court properly dismissed the case and entered judgement in favor of the defendants. [2]

Meade's suggestion that the court attempted to strong-arm him into settling the case by making him choose between settlement and dismissal is, at best, disingenuous. By giving Meade until January 9, 1997 to reach a settlement when it could have finally disposed of the matter on September 6, 1996, the court, in an apparent attempt to achieve what it hoped would be a just result, did far more for Meade than was required. Far from attempting to strong-arm Meade, the court attempted to help him.

Meade complains that Kiefert falsely informed him that his presence was not necessary on September 9,

---

[2] Instead of dismissing the case once it became obvious that Meade would not be able to prosecute it, the court could have permitted defense counsel to move for judgment under Md. Rule 2-519, then granted the motion. Cf. Zdravkovich, 323 Md. at 208. We need not concern ourselves with which course of action would have been the more correct one, as we are satisfied that the end result of the dismissal - - entry of judgment in favor of the defendants - - was proper.

1996, falsely informed the court on that date that Meade was unavailable, then falsely informed Meade that a continuance had been granted and failed to inform him of the outstanding settlement offer and pending dismissal. Meade argues that he "should not be penalized for the laxity and irresponsibility of his attorney." To the contrary, "{t}he actions of an attorney within the scope of his employment are binding upon his client under the ordinary principles of agency," Salisbury Beauty Schools v. State Board of Cosmetologists, 268 Md. 32, 45 (1973). "{T}here is a prima facie presumption that an attorney has authority to bind his client by his actions relating to the conduct of litigation. Secor v. Brown, 221 Md. 119, 123 (1959). See generally Md. Rule 1-331.

Meade's complaints that Kiefert falsely informed him that his presence was not necessary on September 9, 1996, and falsely informed the court that Meade was not available, first appeared in his motions for reconsideration and for a new trial, which apparently were filed pursuant to

Md. Rules 2-533 and 2-534. The resolution of such motions are within the sound discretion of the trial court and will not be disturbed absent a showing of abuse. See I.O.A. Leasing Corp. v. Merle Thomas Corp., 260 Md. 243, 249 (1971) (Rule 2-533); Friends of the Ridge v. Baltimore Gas and Electric Co., 120 Md. 444, 490 (1998) (Rule 2-534). The trial court denied the motions and we perceive no abuse. We remind Meade that at the January 9, 1997 hearing he personally reiterated what Kiefert has said on September 9, 1996, to the effect that he could not be present on September 9 for national security reasons.

Meade's contention that Kiefert falsely informed him that a continuance had been granted was first raised at the hearing on January 9, 1996. Assuming arguendo that the trial court accepted Meade's contention as truthful, there is no reason to believe that the false information affected the outcome of the case. The trial court gave Meade the option of accepting the settlement offer on January 9 and he rejected it. At this point, any complaint that Meade has

against his trial counsel is between Meade and his counsel alone. See generally Prande v. Bell, 105 Md. App. 636, 655 n.6 (1995) ("{A} cause of action for negligent misrepresentation may be . . . asserted against an attorney for legal malpractice").

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.

E

ROBERT E. MEADE Claimant	*	IN THE
		CIRCUIT COURT
v.	*	
		FOR PRINCE
PEP BOYS Employer	*	GEORGE'S COUNTY
And	*	(Appeal from Workers' Compensation
	*	Commission Claim No.:
TRAVELERS INDEMNITY CO. OF ILLINOIS		B-300549)
Insurer	*	Case No.: CAL94-5930

* * * * * * * * *

ORDER

It is this 22nd day of May, 1997, ORDERED that the Motion to Reconsider filed by the Claimant is hereby denied.

/s/_____
Judge
Circuit Court for Prince George's County

5-27-97

F

ROBERT E. MEADE Claimant	*	IN THE
		CIRCUIT COURT
v.	*	
		FOR PRINCE
PEP BOYS Employer	*	GEORGE'S COUNTY
And	*	(Appeal from Workers' Compensation
	*	Commission Claim No.:
TRAVELERS INDEMNITY CO. OF ILLINOIS Insurer	*	B-300549) Case No.: CAL94-5930

* * * * * * * * *

ORDER

This case having been called for trial on September 9, 1996, and the Claimant, Robert E. Meade, having failed to appear, and having further failed to comply with this Court's instructions on September 9, 1996,

It is this 9th day of January, 1997, ORDERED that the Motion to Dismiss filed by the Employer and Insurer be, and it is hereby GRANTED, and the Claimant's appeal from the decision of the Worker's Commission is dismissed. It is further ORDERED that the Claimant be assessed all costs of this Court.

/s/_____
Judge
1-14-97 Circuit Court for Prince George's County

WORKERS' COMPENSATION COMMISSION
6 NORTH LIBERTY STREET
BALTIMORE, MARYLAND 21201-3785

CLAIM NO B300549

CLAIM FOR COMPENSATION
CLAIMANT ROBERT E. MEADE DISALLOWED

EMPLOYER PEP BOYS MANNY MOE & JACK INC

INSURER TRAVELERS INDEMNITY CO OF ILL

Hearing was held in the above claim at Baltimore, Maryland on March 1, 1994, on the following issues:

1. Did the employee sustain an accidental personal injury arising out of and in the course of employment?

2. Causal connection - back.

The Commission finds on the issues presented that the claimant did not sustain an accidental injury arising out of and in the course of employment as alleged to have occurred on 9/12/93; and finds that the back condition is not the result of the alleged accidental injury, and the Commission will disallow the claim filed herein.

It is, therefore, this 16th day of March, 1994, by the Workers' Compensation Commission ORDERED that the claim filed in the above case by the above-named claimant, against the above-named employer and the above-named insurer, be and the same is hereby disallowed.

CHARLES J. KRYSIAK
COMMISSIONER
1a

ATTEST
LOURENNA E. FISHER
SECRETARY

(2)

98-1672

Docket No.:

Supreme Court, U.S.
FILED
MAY 13 1999
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

ROBERT E. MEADE,
Petitioner
v.
PEP BOYS, MANNY, MOE & JACK, INC., et al.,
Respondents

On Petition for Writ of Certiorari from the
Court of Appeals of Maryland

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Perry E. Darby*
Stan M. Haynes
Anthony G. Lardieri
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*counsel of record

10488

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

PUBLISHER'S NOTE :

ORIGINAL PAGINATION IS NOT CONTINUOUS.

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28 U.S.C. §1257

Md. Cts. & Jud. Proc. Code, Ann., §12-203 (1995 Repl. Vol.).

Maryland Rule 8-303

Maryland Rule 8-603(d)

BRIEF OF RESPONDENT PEP BOYS, MANNY, MOE & JACK, INC., IN OPPOSITION TO PETITIONER'S PETITION FOR WRIT OF CERTIORARI

Respondents, Pep Boys Manny, Moe & Jack, Inc., and Traveler's Indemnity Company, through undersigned counsel and pursuant to Supreme Court Rule 15, hereby file this Brief in Opposition to Petitioner, Robert Meade's, Petition for Writ of Certiorari and state as follows.

QUESTION PRESENTED

Is review by the Supreme Court of the United States appropriate?

STATEMENT OF FACTS

The Petitioner filed a claim with the Maryland Workers' Compensation Commission (the "Commission") against Pep Boys, Manny, Moe & Jack,

Inc., and Travelers Indemnity Company of Illinois, (hereinafter the "Respondents"), alleging an accidental injury as that term is defined under the Md. Labor & Employment Code, Ann., §9-501 on September 12, 1993. The Petitioner worked part-time, one weekend afternoon a week, for Pep Boys and held full-time employment elsewhere. A hearing was held before the Commission, following which the Commission issued an Order dated March 16, 1994, finding that the Petitioner did not sustain an accidental injury, and that his alleged disability was not causally connected to his alleged injury.

On April 15, 1994, the Petitioner filed a Petition for Judicial Review of the Commission's decision to the Circuit Court. The case was scheduled for a settlement

conference on October 12, 1994, and for trial on July 20, 1995.

On June 28, 1995, the Petitioner filed a Motion for Continuance, requesting a postponement of the July 20, 1995, trial date. (E. 5-8). [1] It was alleged, by affidavit, that the Petitioner was physically unable to appear at trial and that he had suffered from "shortness of breath and uncontrolled shaking" in another court appearance on April 27, 1995.[2] The Circuit Court granted the

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1Unless otherwise stated, references are to the Joint Record Extract ("E") and the Appendix ("Apx") before the Court of Special Appeals of Maryland, and attached hereto.

[2]This other court appearance was in another of the several legal claims, actual and threatened, that the Petitioner has made against Pep Boys, including, according to the Claimant, actions arising under "EEOC, ADA and several other lawsuits." (E-78).

Petitioner's request for continuance and the trial date was rescheduled for March 6, 1996.

As the second scheduled trial date approached, the Petitioner filed, on February 28, 1996, a second Motion for Continuance requesting a postponement of the March 6, 1996, trial date. (E. 9-12). In this Motion, the Petitioner alleged, again by an affidavit, that two witnesses would be "unavailable" for trial. This second Motion for Continuance was also granted by the Circuit Court, which issued a notice scheduling the case for a conference on August 26, 1996, and for trial on September 9, 1996. (E. 15-17).

The Petitioner failed to appear at the conference on August 26, 1996. Accordingly, it was rescheduled for September 3, 1996, by Order of the Circuit Court. (E.

17). The Order mandated that "Follow-up Settlement Conference set for September 3, 1996," and that "[a]ll parties and adjuster must be personally present." (E. 17) (emphasis added).

On September 5, 1996, counsel for the Petitioner, counsel for the Respondents, and a representative of the Insurer appeared for the settlement conference as ordered. The Petitioner failed to appear. The Petitioner's attorney did present to Judge Sothoron, who presided at the conference, a demand letter based on conversations with his client, indicating terms of settlement that the Petitioner would accept. (Apx. 2). At the conference, counsel prepared and signed a settlement agreement, which was embodied in an Order of Court, signed by the presiding judge and both counsel. (Apx. 2).

On September 9, 1996, the case was assigned to Judge Krauser for trial. Counsel for the Petitioner moved to continue the trial, stating that the Petitioner could not be present for trial because of conflicts with his employment schedule. (E. 22). Counsel for the Petitioner stated that his client had advised him that he was involved in the "Iraq business,"[2] and that the Petitioner "can't be here for national security reasons." (E. 22). Further, the Petitioner's counsel advised the Court that the Petitioner would not disclose to his attorney his telephone number at work. (E. 24). Counsel for the Petitioner did not provide any affidavit supporting the continuance request, pursuant to Rule 2-508(c), as he

---

[3]The Petitioner's full-time employment allegedly involved working in some capacity at the Pentagon.

had done in his two previous requests to continue earlier trial dates. (E. 30). The Court denied counsel's request for continuance and placed the case on a thirty day disposition docket. The Court ordered that the Petitioner had thirty days in which to accept, with minor modifications, the settlement entered into on September 5, 1996. The Court further ordered that if he failed to do so, the case would be dismissed for the Petitioner's failure to appear at trial. (E. 30).

At the expiration of thirty days, having received no indication that the Petitioner accepted the September 5, 1996, settlement agreement, the Respondents filed a Motion to Dismiss the Petitioner's appeal. (E. 40-42). On January 9, 1997, all parties including the Petitioner and his attorney, Respondents' representative and

attorney, attended a hearing on the Motion. (E. 50-82) At the conclusion of the hearing, the Respondents' Motion was granted and the case was dismissed. (E. 49, 81)

After the Court dismissed the case, the Petitioner filed, *pro se,* a Motion to Reconsider. The Court held a hearing on the Petitioner's Motion to Reconsider on May 22, 1997, at which time the Motion was denied.

The Petitioner then filed an appeal to the Court of Special Appeals, which affirmed the decision of the trial court in an unreported opinion. The Court held that "the [trial] court dismissed the case not because Meade was not present but because, due to his absence, [Petitioner's counsel] was unable to prosecute his case." Meade v. Pep Boys, Manny, Moe & Jack, Inc., et al., *unreported*

CSA No. 1562, 4, September Term (1997). (Petitioner's Appendix, at D) Respondent filed several Motions following the Court of Special Appeals' decision, including Motions to Correct the Record, Motions to Stay Enforcement of the Mandate and Motions for Reconsideration. All Motions were denied by the Court of Special Appeals on or before October 19, 1998.

Petitioner then filed a Writ of Certiorari to the Court of Appeals of Maryland which was denied on November 13, 1998. (Petitioner's Appendix, at B) Subsequently, Petitioner filed a Motion for Reconsideration with the Court of Appeals of Maryland which was denied on January 14, 1999. (Petitioner's Appendix, at A) Petitioner filed a Petition for Writ of Certiorari to this Court on April 14, 1999.

ARGUMENT

I. THIS CASE DOES NOT PRESENT AN ISSUE WHICH IS APPROPRIATE FOR REVIEW BY THIS COURT.

A. PETITIONER'S PETITION FOR WRIT OF CERTIORARI WAS NOT TIMELY FILED.

Pursuant to Supreme Court Rule 13, a litigant seeking review by way of a Petition for Writ of Certiorari must file the Petition within ninety (90) days of the date of the entry of judgment, or within ninety (90) days of the denial of a "petition for rehearing."

In the instant case, the Petitioner filed a "Motion for Reconsideration" of the Court of Appeals of Maryland's decision denying his Petition for Writ of Certiorari to that court. The Petitioner did not request rehearing in his subsequent Motion and sought no other relief than the issuance of a Writ. Moreover, the

Appellate Rules of Civil Procedure of Maryland do not contain a provision allowing a litigant to seek "reconsideration" of that court's denial of a Petition for Writ of Certiorari. The Petitioner cannot "invent" a Motion for Reconsideration and use the court's denial of such a Motion to extend his time period for filing a Petition for Writ of Certiorari to this Court. Accordingly, because his Writ was filed later than ninety (90) days from the date of the Court of Appeals' denial of the Petition for Writ of Certiorari to that court, Petitioner's Petition for Writ of Certiorari to the Supreme Court was not timely filed and should be denied.

B. THE SUPREME COURT LACKS JURISDICTION TO ISSUE A WRIT OF CERTIORARI IN THIS MATTER.

Petitioner makes no arguments in his Petition for Writ of Certiorari to support his contention that review by the Supreme Court of the United States is appropriate. He makes various unsupported and inaccurate contentions, but offers nothing in the record to support his bald allegations or to suggest that review by this Court is appropriate under 28 U.S.C. §1257(a), which states:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn into question or where the validity of a statute of any State is drawn into question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right privilege, or immunity is specially set up or

> claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Even a cursory review of the record below demonstrates the lack of any issues on which Supreme Court review is appropriate under 28 U.S.C. §1257. The discretion of a state trial court to manage its caseload, enter judgment against a party who fails to present a *prima facie* case, and to dismiss cases for lack of prosecution is not a matter which implicates the Constitution, laws and/or treaties of the United States. The particular holding in this case has no importance to any party not directly involved herein, and the decisions of the tribunals below are based solely on the facts, the applicable state laws, and the Maryland Rules of Civil

Procedure, and are fully supported by the record. As such, review by the Supreme Court is inappropriate.

II. THE TRIAL COURT'S DECISION TO DISMISS PETITIONER'S CASE AND THE COURT OF SPECIAL APPEALS' DECISION AFFIRMING THE TRIAL COURT WERE LEGALLY CORRECT.

The trial court dismissed Petitioner's case based upon his continued failure to prosecute same and based upon his attorney's inability to prosecute the case without the cooperation and presence of Petitioner, or any witnesses on his behalf, at trial. Decisions regarding the dismissal of cases are vested within the sound discretion of the trial judge, and Maryland's appellate courts have taken a broad definition and view of judicial discretion. Importantly, discretion has never been tied solely to specific legal rules but, rather, has been viewed as to

whether the decision made was reasonable, given the totality of circumstances faced by the trial judge.

Judicial discretion under Maryland law has been defined as "that power of decision exercised to the necessary end of awarding justice and based upon reason and law, but for which decision there is no special governing statute or rule." Saltzgaver v. Saltzgaver, 182 Md. 624, 635 (1944) (emphasis added). It has been held that "[d]iscretion is the warp and woof of judicial fiber." Langrall, Muir & Noppinger v. Gladding, 282 Md. 397, 401 (1978). *See also*, In Re: Adoption/Guardianship No. 3598 In the Circuit Court for Harford County, Maryland, 347 Md. 295, 312-313 (1997).

Applying Maryland's well-established abuse of discretion standard to the present case, it is clear that the

trial court acted within its discretion and that the Court of Special Appeals was correct in affirming its decision. It is equally clear that the laws and facts involved do not implicate the Constitution or laws of the United States. The trial court was faced with an absent litigant who had already obtained two prior continuances of his case. Given the totality of the circumstances, there was no abuse of discretion in dismissing the case and that the Court of Special Appeals of Maryland did not err in affirming the trial court. The Maryland Court of Appeals was also correct in denying Petitioner's Petition for Writ of Certiorari, finding that further review was not desirable and in the public interest.

The relevant inquiry is whether the trial judge, having had the opportunity to see and hear the Petitioner

directly, and knowing the entire history of the case, abused her discretion. As noted earlier, discretion often involves situations where there is "no special governing statute or rule." *See Saltzgaver, supra.* The question is, did the Court weigh the various alternatives and reach a decision with which any reasonable person could agree. *See Judge and North, supra.*

In its review of the trial court's decision dismissing Petitioner's case, the Court of Special Appeals of Maryland noted that the case was dismissed based on counsel's inability to prosecute Petitioner's case in light of Petitioner's unexcused absence from court on the day of trial. As the Court noted,

> [a]bsent the granting of a continuance, it was incumbent upon Meade's counsel, Kiefert, to prosecute the case. There is no dispute that, in appealing from the decision of the Workers'

> Compensation Commission, Meade was seeking an essential trial de novo . . . Under the circumstances, the court properly dismissed the case and entered judgment in favor of the [Respondents]."

Meade v. Pep Boys, Manny, Moe & Jack, Inc., et al., *unreported* CSA No. 1562, 6, September Term (1997).

(citations omitted) The Court further held:

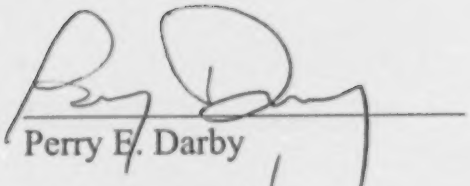
> Instead of dismissing the case once it became obvious that Meade would not be able to prosecute it, the [trial] court could have permitted defense counsel to move for judgment under Md. Rule 2-519, then granted the motion. Cf. Zdradovich v. Bell Atlantic-Trico Leasing Corp., 323 Md. 200, 208 (1991). We need not concern ourselves with which course of action would have been the more correct one, as we are satisfied that the end result of the dismissal -- entry of judgment in favor of the [Respondents] -- was proper.

Id. The Court of Special Appeals found no abuse of discretion on the part of the trial Court in dismissing Petitioner's case under the totality of circumstances.

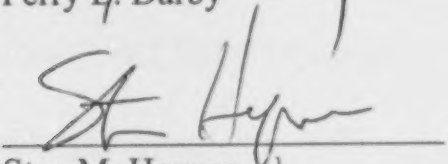
Significantly, Petitioner has offered nothing in his Petitions to the Court of Appeals of Maryland or to this Court to indicate that the Court of Special Appeals' decision to affirm the trial court was erroneous. Accordingly, the Petitioner's request for Writ of Certiorari should be denied.

CONCLUSION

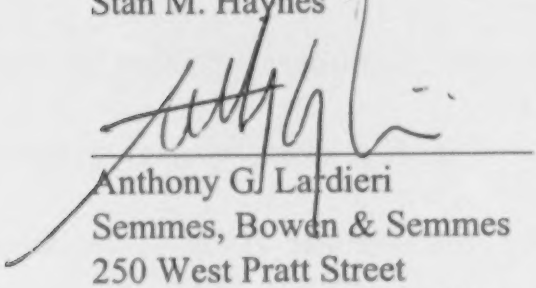
The decisions of the Maryland trial and appellate courts were legally correct. In addition, this Petition was not timely filed and, even so, this case does not present any issue for which review by this Court is desirable or appropriate. Accordingly, Respondents respectfully request that Petitioner's Petition for Writ of Certiorari be denied.



Perry E. Darby



Stan M. Haynes



Anthony G. Lardieri
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, Maryland 21201
410-539-5040

Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12TH day of May, 1999, the foregoing Respondent's Brief in Opposition to Petitioner's Petition for Writ of Certiorari was mailed, first class, postage prepaid to: Robert Meade, 102 Wallace Avenue Brooklyn-Curtis Bay, Brooklyn Park, Maryland 21225, Petitioner, *pro se.*

Perry H. Darby

(B0049794.WPD;1)

APPENDIX

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

ROBERT E. MEADE	•	
Claimant	•	
v.	•	Case No. CAL 94-05930
PEP BOYS MANNY, MOE & JACK	•	
Employer	•	(Petition form Workers' Compensation Commission Claim No.:B-300549)
and	•	
TRAVELERS INDEMNITY CO. OF ILLINOIS	•	
Insurer	•	

MOTION FOR CONTINUANCE

Comes now the Plaintiff, Robert E. Meade, by and through counsel, Stephen H. Kiefert, Esquire, and moves this Honorable Court for a continuance of the presently set trial date and states as follows:

1. The trial date is presently scheduled for July 20, 1995.

2. At a prior court date on April 27, Plaintiff Robert Meade was physically unable to remain present in the courtroom, let alone testify. The courtroom deputy, who is also a paramedic, thought an ambulance might be necessary. As his symptoms (such as shortness of breath and uncontrolled shaking) continued, he was eventually removed from the courthouse in a wheelchair and transported to a doctor.

3. His physicians have been unable to determine the cause of his symptoms, although a drug interaction is being considered. A change in medication has not stopped them. His blackouts have continued to occur and are lasting

longer. The side effects of these medications have seriously affected his ability to testify, such as confusing dates and forgetting facts and names. His written reports at work are returned as unacceptable.

4. The trial date has not previously been continued.

5. A consulting specialist to one of his doctors has said he should be off one of his medications by the end of September.

6. An affidavit pursuant Rule 2-508 is attached.

WHEREFORE, the Plaintiff respectfully requests a continuance until October.

Respectfully submitted,

KIEFERT & YEAGER, P.A.

Stephen H Kiefert

Stephen H. Kiefert, Esquire
9418 Annapolis Road, Suite 204
Lanham, Maryland 20706
(301) 577-9390
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 28 day of June, 1995 a copy of the foregoing *Motion for Continuance* was mailed, first-class mail, postage prepaid, to: Stan M. Haynes, P.C. Semmes, Bowen & Semmes, 250 West Pratt Street, Baltimore, Maryland 21201 (attorney for employer and insurer).

Stephen H Kiefert

Stephen H. Kiefert, Esquire

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

ROBERT E. MEADE	*	
Claimant	*	
v.	*	Case No. CAL 94-05930
PEP BOYS MANNY, MOE & JACK	*	
Employer	*	(Petition form Workers' Compensation Commission Claim No.:B-300549)
and	*	
TRAVELERS INDEMNITY CO. OF ILLINOIS	*	
Insurer	*	

AFFIDAVIT PURSUANT TO RULE 2-508(C)

Comes now the Plaintiff's counsel, Stephen H. Kiefert, Esquire, and states as follows:

1. At a prior court date on April 27, Plaintiff Robert Meade was physically unable to remain present in the courtroom, let alone testify. The courtroom deputy, who is also a paramedic, thought an ambulance might be necessary. As his symptoms (such as shortness of breath and uncontrolled shaking) continued, he was eventually removed from the courthouse in a wheelchair and transported to a doctor.

2. His physicians have been unable to determine the cause of his symptoms. A change in medication has not stopped them. The previously mentioned blackouts have continued to occur and are lasting longer. The side effects of these medications have seriously affected his ability to testify, such as confusing dates and forgetting facts and names. His written reports at work are returned as unacceptable..

3. Plaintiff Robert Meade is the central witness for the Plaintiff. He is the only one who is familiar with the incident on September 12, 1993, and his prior condition and his normal job duties.

4. The added stress of being in court and having to testify while on tha same medications and with the same conditions could very likely bring on another onset of the same symptoms as occurred on April 27 and jeopardize his health.

5. Plaintiff Meade has received inconsistent advice from his doctors but one of them has said that he does not want to take him off his medication until the end of September. Because the problem seems to be a drug interaction, this would appear to when he would be ready for trial.

I hereby certify under the penalties of perjury that the above is true to the best of my information and knowledge.

Stephen H Kiefert

Stephen H. Kiefert, Esquire
9418 Annapolis Road, Suite 204
Lanham, Maryland 20706
(301) 577-9390

CERTIFICATE OF SERVICE

I hereby certify that on this 28 day of ~~May~~ June, 1995, a copy of the foregoing Affidavit was mailed, first-class mail, postage prepaid, to Stan M. Haynes, P.C. Semmes, Bowen & Semmes, 250 West Pratt Street, Baltimore, Maryland 21201 (attorney for employer and insurer).

Stephen H Kiefert

Stephen H. Kiefert, Esquire

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

ROBERT E. MEADE	•	
Claimant	•	
v.	•	Case No. CAL 94-05930
PEP BOYS MANNY, MOE & JACK	•	
Employer	•	(Petition from Workers' Compensation Commission Claim No.:B-300549)
and	•	
TRAVELERS INDEMNITY CO. OF ILLINOIS	•	
Insurer	•	

CLERK OF THE CIRCUIT COURT
96 FEB 29 PM 4:09

MOTION FOR CONTINUANCE

Comes now the Plaintiff, Robert E. Meade, by and through counsel, Stephen H. Kiefert, Esquire, and moves this Honorable Court for a continuance of the presently set trial date and states as follows:

1. The trial date is presently scheduled for March 6, 1996.

2. The Plaintiff has just learned that his medical witness, Dr. Berdann, will be unavailable due to sickness.

3. The Plaintiff has also just found out that an eyewitness to the injury is unavailable.

4. An affidavit pursuant Rule 2-508 is attached.

WHEREFORE, the Plaintiff respectfully requests a continuance.

KIEFERT & YEAGER, P.A.

Stephen H Kiefert

Stephen H. Kiefert, Esquire
9418 Annapolis Road, Suite 204
Lanham, Maryland 20706
(301) 577-9390
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 28 day of February 1996, a copy of the foregoing *Motion for Continuance* was mailed, first-class mail, postage prepaid, to: Stan M. Haynes, P.C. Semmes, Bowen & Semmes, 250 West Pratt Street, Baltimore, Maryland 21201 (attorney for employer and insurer). and facsimile

Stephen H Kiefert

Stephen H. Kiefert, Esquire

IN THE CIRCUIT COURT OF MARYLAND FOR PRINCE GEORGE'S COUNTY

ROBERT E. MEADE	*	
Claimant	*	
v.	*	Case No. CAL 94-05930
PEP BOYS MANNY, MOE & JACK	*	
Employer	*	(Petition from Workers' Compensation Commission Claim No.:B-300549)
and	*	
TRAVELERS INDEMNITY CO. OF ILLINOIS	*	
Insurer	*	

CLERK OF THE CIRCUIT COURT
96 FEB 29 PM 4:12

AFFIDAVIT PURSUANT TO RULE 2-508(C)

Comes now the Plaintiff, Robert Meade, and states as follows:

1. The Plaintiff intends to call Dr. Berdann as a witness because he is his regular family doctor and can testify as to the Plaintiff's lack of any back problem before the injury.

2. The issue in this case is the causation of the Plaintiff's back problem and such testimony would be very probative.

3. An eyewitness to the injury is very probative on the other issue of whether the Plaintiff sustained an accidental injury on the job.

4. The Plaintiff had contacted the witnesses months ago and just learned of the problems this week.

5. Dr, Berdann's testimony by videotape is probably impossible to set up at such short notice with scheduling considerations. Plaintiff's attorney has left a

message with Defendant's attorney but has been unable to speak directly.

6. The Plaintiff has continued to suffer from the previously disclosed symptoms. His physicians have been unable to determine the cause of his symptoms. A further change in medication has still not stopped them. The previously mentioned blackouts have continued to occur but not as frequently. Just this week, he had three blackouts in one day. The side effects of these medications have seriously affected his ability to testify, such as confusing dates and forgetting facts and names. Written reports at work are still returned as unacceptable..

7. Plaintiff Meade has received inconsistent advice from his doctors but one of them has said that he may be able to reduce or stop the medicine by approximately June. Because the problem seems to be a drug interaction, this would appear to be the earliest when he could be ready for trial. The possibility of nerve damage has now been raised also and a neurological consultation is to be arranged..

I hereby certify under the penalties of perjury that the above is true to the best of my information and knowledge.

Robert E. Meade

Robert Meade

CERTIFICATE OF SERVICE

I hereby certify that on this 28 day of February, 1996, a copy of the foregoing Affidavit was mailed, first-class mail, postage prepaid, to Stan M. Haynes, Semmes, Bowen, and Semmes, 250 Pratt St., Baltimore, Md. 21201, Attorney for Defendant.
and faxed

Stephen H Kiefert

Stephen H. Kiefert, Esquire

CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND
DIRECTOR OF ASSIGNMENTS AND CASE MANAGEMENT
COURTHOUSE

Y AUGUSTINE
DIRECTOR

UPPER MARLBORO, MARYLAND 20772
TELEPHONE: 952-3292

KARLESTER DAVIS
SUPERVISOR
CIVIL DIVISION

CIVIL NOTICE

TO:

DATE: AUGUST 9, 1996

STEPHEN H KIEFERT, ESQ.
9420 ANNAPOLIS RD
STE 303
LANHAM, MD 20706

RE: CAL94-05930
TRACK NO:

ROBERT E MEADE
(PLAINTIFF)

VS

PEP BOYS MANNY MOE AND JACK
(DEFENDANT)

AUG 12 1996
CLERK OF THE CIRCUIT
COURT PRINCE GEORGE'S COUNTY

THE ABOVE MENTIONED CASE HAS BEEN SCHEDULED FOR FUTURE COURT ACTIVITY AS INDICATED BELOW:

08/26/96	01:30PM	SCHEDULING CONFEFERNCE
09/09/96	10:00AM	TRIAL/FIRST ON ( )

C:

STAN H HAYNES, ESQ.
250 WEST PRATT STREET
BALTIMORE, MD 21201

(CASE: CAL94-05930)

94 5930

SEMMES, BOWEN & SEMMES

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

250 WEST PRATT STREET
BALTIMORE, MARYLAND 21201

TELEPHONE 410-539-5040

FACSIMILE 410-576-4788

SCALDARA & POTLER, LLP
OF COUNSEL
(410) 576-4858

SUITE 900
CONNECTICUT AVE., N.W.
ASHINGTON, D.C. 20036
LEPHONE 202-822-8250
ACSIMILE 202-822-8258

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12 EAST MAIN STREET
BURY, MARYLAND 21801
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ECT DIAL (410)576-4723

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SUITE 800
265 MILL STREET
HAGERSTOWN, MARYLAND 21740
TELEPHONE 301-739-4558
FACSIMILE 301-739-9316

August 7, 1996

FILED
AUG 12 1996
CLERK OF THE CIRCUIT COURT

Assignment Office
Circuit Court for Prince George's County
Court House
Room 267 M
Upper Marlboro, MD 20772

Re: Robert E. Meade v. Pep Boys
Case Number: CAL 94-05930

Dear Sir/Madam:

Stephen Kiefert, counsel for the Claimant and I have agreed to schedule the above-captioned matter for a settlement conference on August 26, 1996 at 2:00 p.m.

Thank you for your assistance.

Very truly yours,

Stan Haynes

Stan M. Haynes SMH

cc: Stephen H. Kiefert, Esquire
9420 Annapolis Road
Suite 203
Lanham, MD 20706

96 AUG -8 PM 2:53
CIRCUIT

E-16

#43 8/30/96

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND AUG 30 19[illegible]

ROBERT E. MEADE

Plaintiff

vs.

CAL No. 94-05930

PEP BOYS, ET AL.

Defendants

MEMORANDUM OF COURT

August 26, 1996

Settlement Conference held this date in Chambers. Follow-up Settlement Conference set for September 3, 1996 at 9:00 a.m. All parties and adjuster must be personally present at the Follow-up Scheduling Conference set for September 3, 1996 at 9:00 a.m.

Arthur M. Monty Ahalt, Judge

Copies mailed by the Court to:

Assignment Office

Stan M. Haynes, Esq.
Semmes, Bowen & Semmes
250 West Pratt Street
Baltimore, MD 21201

Stephen H. Kiefert, Esq.
9420 Annapolis Road, #203
Lanham, MD 20706

Karen T. Duckett, Exec. Admin. Aide
Dated: August 26, 1996

107

E-17 EXHIBIT 1

P R O C E E D I N G S

THE COURT: CAL 94-05930, Petition of Robert E. Meade for Judicial Review from the Workmen's Compensation Commission v. Pep Boys, Manny, Moe & Jack.

Why do I get all the worker's comp. cases?

MR. HAYNES: You're just lucky.

THE COURT: All right. Now what's the story on this case?

MR. KIEFERT: The plaintiff is moving to continue at this time.

THE COURT: Why?

MR. KIEFERT: Because he is -- he works for the Defense Department. He is tied up with this Iraq business. He's been working around the clock at a place he can't tell me about doing what he can't tell me about. They've been sleeping on cots and ordering in pizzas. He can't be here for national security reasons. He's been ordered to stay there.

I got a phone message -- I checked my messages this morning. He was home between 8:00 and 9:00 last night. They let him go home to shower and change occasionally, but other than that, for national security reasons, he has been ordered not to be here. All leaves have been canceled.

THE COURT: Okay.

MR. HAYNES: May I respond?

THE COURT: Yes.

MR. HAYNES: This case has been pending in this court --

THE COURT: Identify yourself for the record please.

MR. HAYNES: I'm sorry. I'm Stan Haynes. I represent the employer and the insurer.

This case has been pending in this court for some two and a half years. It was scheduled for trial in mid-1995. At that point a few days prior to the trial, Mr. Meade filed a motion for continuance alleging that he had a reaction to medication and would be unable to testify. That was his first continuance which was granted. It was scheduled again.

THE COURT: Do you have any reason to believe that that was not truthful?

MR. HAYNES: I have every reason to believe the current statements are not true.

In March of 1996 he requested a rescheduling of the trial alleging that his medical witness was ill. The case was reset for September 9.

On August 26, two weeks ago, we appeared by agreement of counsel at a settlement conference in this court. I had my insurance adjustor here in court. Mr. Meade did not appear. Judge Ahalt ordered it to be

rescheduled for September 3 and ordered Mr. Meade to appear. Due to a conflict in the schedule of Mr. Kiefert and the plaintiff, it was reset for September 5. Even pursuant to that order he did not appear.

Basically at a settlement conference last Thursday before Judge Sothoron -- we were here most of the day. I again had my client here. We ironed out a settlement basically consistent with the demand that was made upon us. Mr. Kiefert signed off on that but Mr. Meade hasn't agreed to that. Mr. Kiefert went to Judge Ahalt and indicated he wanted a continuance, and Judge Ahalt said he would deny that continuance. The continuance was already denied last week, and Judge Sothoron said if there was --

THE COURT: Mr. Kiefert, is Mr. Meade married?

MR. KIEFERT: No. Just to respond to a couple of those --

THE COURT: Have you talked to him?

MR. KIEFERT: Well, because of the way he's been at work -- I'm not allowed to have his phone number so I can't call him at work.

THE COURT: Has he called you?

MR. KIEFERT: There was a phone message this morning.

THE COURT: Did he accept or reject the settlement?

than what he's asking for.

I'm telling you he's failed to appear here today. He's had two prior continuances of the case. I cannot grant a third continuance without an affidavit saying it is for national security reasons.

I will put it on a 30 day disposition docket to either be settled or dismissed within 30 days. I don't see that I have any choice. I don't see that you have any choice. I think we are stuck now because he can't be here because he did not participate in these settlements, because he wasn't available on the 26th, 3rd or 5th -- the 26th of August, the 3rd or 5th of September to participate in these. I mean, the 3rd and 5th of September was not -- I don't know why he wasn't available on the 26th by phone or the 3rd and 5th.

MR. KIEFERT: Because he works in a national security situation. He is not allowed to make phone calls. He is not allowed to receive phone calls. That would have obviously been the ideal situation.

THE COURT: That was the case as of the 3rd of September?

MR. KIEFERT: Yes, Your Honor. As you may recall, we were sending cruise missiles into Iraq last week. That's what he's tied up with. He is on the Iraq mission.

MR. HAYNES: Respectfully, Your Honor, I don't

#49 10/15/96

ROBERT E. MEADE	*	IN THE
Claimant	*	CIRCUIT COURT
v.	*	FOR PRINCE
PEP BOYS	*	GEORGE'S COUNTY
Employer	*	(Appeal from Workers' Compensation Commission
and	*	Claim No.: B-300549)
TRAVELERS INDEMNITY CO. OF ILLINOIS	*	Case No.: CAL94-5930
	*	
Insurer	*	
	*	

* * * * * * *

EMPLOYER AND INSURER'S
MOTION TO DISMISS CLAIMANT'S APPEAL

Pep Boys, Employer, and Travelers Indemnity Company of Illinois, Insurer, by their attorney, Stan M. Haynes, hereby file their Motion to Dismiss the subject workers' compensation appeal filed by the Claimant, Robert Meade, and state as follows:

1. This case was scheduled for trial on September 9, 1996, and was assigned to the Honorable Sherrie L. Krauser.

2. The Claimant, Robert Meade, failed to appear at the trial, just as he had earlier failed to appear at two settlement conferences held on August 26, 1996, before Judge Ahalt and on September 5, 1996 (which was rescheduled from September 3, 1996), before Judge Sothoron. His failure to appear at the latter conference was in direct violation of an Order from Judge Ahalt. (Exhibit 1).

3. At the settlement conference before Judge Sothoron, the parties negotiated a settlement, based upon terms submitted in a demand letter sent by the Claimant's attorney, with the approval of his client, prior to the conference. Since the Claimant failed to appear at the conference, he did not sign the Settlement Order, although it was signed by his attorney. (Exhibit 2).

4. At the scheduled trial on September 9, 1996, Judge Krauser denied the request for the Claimant's attorney for a postponement of the case, noting that the Claimant had previously requested, and received, postponements of two earlier trial dates scheduled in 1995 and earlier in 1996.

5. At the scheduled trial on September 9, 1996, Judge Krauser instructed the Claimant's attorney that he had thirty days to have the Claimant accept and sign the settlement negotiated before Judge Sothoron (with only minor alterations permitted) and, if the Claimant failed to do so, this case would be dismissed at the end of the thirty day period, based upon the Claimant's failure to appear at the scheduled trial on September 9. Claimant's counsel was instructed by the Judge to provide any proposed changes in the settlement to the Employer and Insurer within two weeks of September 9, in order that the case could be disposed of at the end of the thirty day period established by the Court.

6. Thirty days have now passed and counsel for the Employer and Insurer have heard nothing from the Claimant's counsel as to whether the Claimant has accepted the settlement negotiated before Judge Sothoron. The only communication at all received from the Claimant's counsel was a letter from his paralegal dated September 25, 1996, enclosing some medical reports. (Exhibit 3).

7. Given the failure of the Claimant to appear at the trial on September 9, 1996, and his failure to comply with Judge Krauser's instructions to act on the proposed settlement within the thirty day period set by the Court, the Employer and Insurer respectfully request that the Claimant's appeal be dismissed.

Respectfully submitted,

Stan M. Haynes
Semmes, Bowen & Semmes
250 West Pratt St.
Baltimore, MD 21201
(410) 539-5040

Attorney for Employer
and Insurer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of October, 1996, a copy of the foregoing Motion to Dismiss was mailed, postage prepaid, to Stephen H. Kiefert, Esquire, 9420 Annapolis Road, Suite 303, Lanham, MD 20706, attorney for Claimant.

Stan M. Haynes

COPY

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

PETITION OF ROBERT E. MEADE FOR
JUDICIAL REVIEW FROM THE WORKMEN'S
COMPENSATION COMMISSION,
Plaintiff,

vs.

Civil Action Law
No. 94-05930

PEP BOYS MANNY MOE & JACK, INC.,
AND TRAVELERS INDEMNITY CO. OF ILLINOIS,
Defendant,

_____/

REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS
(Motion)

Upper Marlboro, Maryland

Thursday, January 9, 1997

BEFORE:

HONORABLE SHERRIE L. KRAUSER, Associate Judge

APPEARANCES:

For the Plaintiff:

STEPHEN H. KIEFERT, ESQ.

For the Defendant:

STAN M. HAYNES, ESQ.

MARY KAY SHULTZ
Official Court Reporter,
P.O. Box 401
Upper Marlboro, Maryland

PROCEEDINGS

THE COURT: CAL 94-05930. This is the petition of Robert Meade versus Pep Boys Manny, Moe and Jack, Inc. and Travelers Indemnity Company of Illinois. It's a worker's compensation appeal.

Now, Mr. Kiefert, we did receive a call in chambers at about ten of 12:00 from your client indicating that he would be delayed in getting here. He was advised by my staff that I wasn't granting any delay and that he needed to get here on time or as close thereto as he could. He indicated he would be here about 2:00. I know that was unbeknownst to you. I don't want to indicate on why that's a reflection you're here at this time.

MR. KIEFERT: Did he say where he was calling from?

THE COURT: His office. He was just then leaving his office is what he said.

MR. KIEFERT: I believe that's the Pentagon.

THE COURT: He said in Virginia, and it would take him two hours to get here, if he stopped for a long lunch and that's why I said there would be no excuses.

We're here on the defendant's motion to dismiss this.

(Plaintiff arrived in court.)

MR. KIEFERT: This is my client, Your Honor.

THE COURT: You can come up, if you'd like.

We're here on the defendant's motion to dismiss and/or plaintiffs request to complete the settlement that was negotiated in part back in September. And part of the issue when this case appeared before me on September the 9th was what was the status of the case after the settlement conferences on August the 26th and September the 5th, 1996 which were obviously just shortly before the trial date of September the 9th.

At that time my recollection is that this Court in reviewing the settlement conference report and notes from the judge and the proposed order, which was unsigned by the plaintiff, with regard to the settlement was that it was obviously without full authority of the plaintiff to resolve and that plaintiff's counsel was supposed to get some additional information and finalize the settlement upon providing that information and authority of his client, and that that had not occurred by September 9th, which was the trial date that we continued the trial date for the completion of the settlement was my recollection, came back on October the 9th and for some reason it was not disposed of at that time. I don't remember what happened.

MR. KIEFERT: Your Honor, we did not come back then because we never got notices.

THE COURT: Okay. That was set as a disposition

date automatically by the court and nobody appeared on that date. Okay.

MR. KIEFERT: Can I be heard on the motion?

THE COURT: Yes.

MR. KIEFERT: I think the gist of what you said is correct, but there are some -- as I laid out in the motion, we had been here on October the 26th for a settlement conference before Judge Ahalt.

THE COURT: October 26th?

MR. KIEFERT: Excuse me, August 26. Judge Ahalt issued an order resetting the --

THE COURT: There is no requirement that the plaintiff appear.

MR. KIEFERT: Listed as a scheduling conference.

MR. HAYNES: There was an order by Judge Ahalt that did specifically direct the plaintiff and Miss Miller to appear. We came back on September 5th in front of Judge Sothoron. Prior to that we had been given a letter from Mr. Meade outlining some settlement demands, and we negotiated the settlement based upon that which Mr. Kiefert had signed off on. We came back on the 9th. Mr. Meade did not appear for the trial in front of Your Honor. You denied his request for continuance, and you indicated that at that time that Claimant would either accept the settlement agreement negotiated before Judge Sothoron as it

was or with minor alterations, you indicated minor alterations or in 30 days you would dismiss the case. And you directed Mr. Kiefert to submit to us within two weeks of the scheduled trial any proposed changes so that we could have everything wrapped up within 30-day period. Thirty days came and went, and I heard nothing from Mr. Kiefert.

THE COURT: Mr. Kiefert, you can have a seat.

MR. HAYNES: I called your office and that's when I was instructed to file this motion to dismiss by your clerk. On the day of or the day after I filed the motion is when I received some additional information from Mr. Kiefert. Subsequently, they have sent me additional information, and the bottom line is the settlement agreement that was negotiated before Judge Sothoron came out to a total of about $17,000 in medicals and payments. They now want an additional $13- to $15,000 on top of that.

Given Your Honor's instructions that the case would be dismissed unless the settlement as previously negotiated was accepted or with minor alterations, we think they are bound by Your Honor's decision and ask that the case be dismissed or that the settlement be accepted as written.

THE COURT: Let me see if I can find the original settlement proposal.

MR. KIEFERT: It wasn't filed, but it was attached as a copy of my exhibit.

THE COURT: Here it is. There was a settlement conference before Judge Sothoron, a demand was, okay, all right. The order with Judge Sothoron was medical bills, looks like it was pending receipt of reports and bills, Dr. Sokoloff was the issue, and what is the alleged accident here?

MR. KIEFERT: He was working at Pep Boys as a salesman, was assisting in lifting an engine, felt the pain in his back.

THE COURT: That's the accident?

MR. KIEFERT: Yes, your Honor.

MR. HAYNES: And the Commission found it was not compensable.

THE COURT: Under what theory would Claritan have to do with a back injury?

MR. KIEFERT: That was one of the injuries at the settlement.

THE COURT: I understand. That's one of the things we were discussing in court back in September.

MR. KIEFERT: We obtained a statement from his prescribing regular doctor, Dr. Berdann, as to why he was taking Claritan. He had been on a prior allergy medicine but because of the back medicine they were prescribing for

his injury, there was an interaction. He was blacking out.

THE COURT: So they changed the allergy medicine. It means the difference between one allergy medicine and another.

Mr. Meade, excuse me. Are those prescriptions --

MR. MEADE: I need to tell him why. I know why.

THE COURT: Mr. Meade. I can tell you I have been taking allergy medicine of one sort or another since I was 12-years-old. My kids have taken allergy medicines. The only thing that changes is one antihistimine to another, the one shifting of one antihistimine and trading for another one. It does not make the second antihistimine causally connected to the back injury. That does not permit the Claritan. It's not going to be allowed. End of discussion. Move on. What's your next issue?

MR. KIEFERT: So all we're talking about is the difference between the two.

THE COURT: Right, there isn't any difference between the two.

MR. KIEFERT: In price there is.

THE COURT: Is he paying out of pocket or health insurance?

MR. MEADE: I paid out of pocket.

THE COURT: Excuse me. I understood you work for the Defense Department, is that correct?

MR. MEADE: Yes, I do.

THE COURT: You don't have health insurance?

MR. MEADE: Yes, but this is an accident caused to them.

THE COURT: That's your choice.

MR. MEADE: I notified them in advance.

THE COURT: Did you file under your prescription plan for your antihistamine before this accident?

MR. MEADE: No.

THE COURT: Your antihistamine for your allergies, was it paid for through your health insurance prescription plan prior to this accident?

MR. MEADE: I had to take over-the-counter drugs which were cheaper, and I paid for them myself. They're only four ninety-nine a month, and when I had to take this because this medicine --

THE COURT: You switched to Claritan, you didn't put it through prescription plan?

MR. MEADE: Claritan is non drowsiness.

THE COURT: Mr. Meade, try and answer the question, did you ever try to put your Claritan through your prescription plan?

MR. MEADE: No, because I notified them what happened in the accident, and they said it should all be dealt with them and dealt with them only if it's not taken

care of them in the court case, if it's not taken care of in the courthouse.

THE COURT: You need to slow down and not talk when I tell you to stop.

Fine. I'm clarifying this for you, Mr. Meade. Keep your mouth shut. I'm clarifying this for you. I have just ruled that it is unrelated. You may take that back to your health insurance carrier and tell them that the court said that the Claritan prescription would not be allowed under this claim and they better now process it. Okay? Move on. What's your next issue, Mr. Kiefert?

MR. KIEFERT: The specifics as to the bills for Dr. Sokoloff, you were going to supplied.

THE COURT: Did we do that? That was estimated at $4500. What is it in actuality?

MR. KIEFERT: That was the figure, Your Honor. The problem was because the medical bills were not at issue on September 9th we didn't have the actual bills with us.

THE COURT: I understand, Mr. Kiefert. Try and answer my question which is what are the specifics? Have they been supplied?

MR. KIEFERT: Yes.

THE COURT: Do you have those, Mr. Haynes?

MR. KIEFERT: He did send me those bills, yes.

THE COURT: Is there a substantial -- what is the

difference between -- why don't you tell me what they are? I see the proposed order or the actual.

MR. KIEFERT: I think the amount is the same.

THE COURT: The amounts are the same. So all of these medical bills listed in the order of court on September the 5th are the same?

MR. HAYNES: Except for I think there was, they have listed $511 for Dr. Berdann, and I don't know what the change is there.

MR. KIEFERT: The reason there is, Your Honor, was that Dr. Berdann changed billing services and when we found out the amount of his bill --

THE COURT: It's supposed to be 511 instead of 246, is that right?

MR. HAYNES: That's what they indicate. I have no problem with that.

THE COURT: Great. Let's move on. What's the next issue, Mr. Kiefert?

MR. KIEFERT: There is no issue.

MR. MEADE: Your Honor, can I speak?

THE COURT: No, you can't. You have an attorney.

Mr. Meade, let me explain this to you. I'm a judge. I'm sitting on the bench in open court. There is nothing informal about this except your attitude. I have had about enough of it, and I'm about to hold you in

contempt. If you want to hear about that, you can do that. You are here with your attorney. We are here in court on a motion to dismiss, to either dismiss your case or to enforce a settlement. I am trying to work this out.

If I hear from you one more time, I will not only dismiss your case, I will hold you in contempt of court. And if you interrupt my conversation with your attorney again, I will do the same. Is that clear?

MR. MEADE: Uh-huh.

THE COURT: You are to sit there and be quiet and listen. And if you need to get your attorney's attention, you do so by writing him a note. You don't interrupt my proceedings, particularly when in complete and total disrespect of this court you failed to appear on the trial date of September the 9th and at a settlement conference on September the 5th, which is the reason that we are still messing around with your case today. Had you appeared as you were supposed to on September the 5th or September the 9th, we wouldn't have to be here today. So I don't want to hear any more interruption from you. Do you understand?

MR. MEADE: Yeah.

THE COURT: Thank you.

MR. KIEFERT: Your Honor --

THE COURT: Mr. Kiefert, there is no dispute about the $511 as the bill for Dr. Berdann. Mr. Haynes

said he isn't going to fight about that.

Now, I'm looking at your further response to the motion to dismiss. You said there were several errors, the amount of Dr. Berdann's bill, that's been accepted. The Claritan prescription I said that was rejected. The amount of the neurological bill, who is that?

MR. KIEFERT: That was one of the problems we had at the September hearing.

THE COURT: Which doctor --

MR. KIEFERT: It hadn't happened.

THE COURT: It hadn't happened?

MR. KIEFERT: Yes, Your Honor. He's been treating with an orthopedist for all of this time. The orthopedist finally said we're not able to fix him.

THE COURT: Maybe it is a neurological problem. He's been referred to a neurological consultation.

Has it happened now?

MR. KIEFERT: Mr. Meade, has the neurological consultation happened?

MR. MEADE: No, he can't do it until I get this settlement.

MR. KIEFERT: Apparently, he won't do it until there is a provision for payment.

THE COURT: Mr. Kiefert, Mr. Kiefert.

MR. KIEFERT: Yes.

THE COURT: This is the biggest bunch of nonsense I have ever heard. Your client has made excuses to this court for his non-appearance based on his high level of position and priority with the Defense Department that required him not to be present regardless of the orders of this court to be here. He has conceded to this court that he is, as every other federal government employee, covered by a very generous health insurance package. His election to discuss with a neurologist whether something was accident related and therefore covered by some other insurance other than his health insurance is absolutely preposterous. Once a doctor makes a referral for additional testing or additional consultation it's the patient's obligation to carry forward with that effort, and let the financial issue be resolved later. I have never heard of a doctor knowing that a patient has health insurance refuse to treat or examine that patient based on the conjecture that it may not be covered by health insurance, but more properly covered by some other form of insurance. As long as the doctor knows it will ultimately be paid by one insurance or another, they're going to treat the patient. This is ridiculous. How long has he been treating with this orthopedist?

MR. KIEFERT: The accident happened in September of '93.

THE COURT: September of '93. So after two years he finally decides he got a referral. When did the referral -- when was the referral made to the neurologist?

MR. KIEFERT: When was that? It was Dr. Berdann that referred you to the neurologist?

MR. MEADE: But Dr. Berdann did to whom it may concern.

MR. KIEFERT: When was it?

MR. MEADE: Back in October.

THE COURT: Of what year?

MR. MEADE: Of this year.

MR. KIEFERT: In '96?

MR. MEADE: Of '96. Last year.

THE COURT: And he's been treated by a different orthopedist before that?

MR. KIEFERT: There were a couple of orthopedists.

THE COURT: It's not allowed. No causal connection. Move on.

So he's been treated by several orthopedist, none of whom found anything. Finally, Dr. Berdann says I throw up my hands, I'm the third or fourth orthopedist, and we're going to send you to a neurologist.

MR. KIEFERT: Doctor Berdann is his family doctor. He's not an orthopedist.

THE COURT: Dr. Berdann sent him to several orthopedists. They didn't solve his problem so Dr. Berdann, not the orthopedist, sent him to a neurologist, is that right? Is that correct? Dr. Berdann, the general practitioner, and not the orthopedist?

MR. MEADE: Ask him to put me on the stand so I can explain the whole thing in detail. This is the first time you have ever seen me about this.

THE COURT: I don't need to hear from you except to answer my questions.

How many orthopedists did you see from the time of this accident in September of '93?

MR. MEADE: Quite a few. I don't know exactly how many.

THE COURT: Did any of them refer you to a neurologist?

MR. MEADE: No. But Dr. Berdann sent me to one which said he wanted me to drop Dr. Pabla, who is my regular orthopedic surgeon, the two of them was fighting. I didn't want to drop Dr. Pabla, that was Dr. Meyers. He only seen me one time.

THE COURT: Thank you very much.

MR. MEADE: But --

THE COURT: I said that's it. Thank you very much. I think I've got the picture. And the amount of

temporary total disability was incorrect in what way? I don't see anything in here about that.

MR. KIEFERT: It wasn't set out specifically on the second page of the proposed settlement. There was a payment for $5,000 which would have been his --

THE COURT: $2,500 for the permanency and $5,000 for the temporary. That was the settlement agreement.

MR. KIEFERT: He had a separate rating for the permanent/partial and that's the $2,500.

THE COURT: And the $5,000 was to cover for part-time job of two years of lost wages, right?

MR. HAYNES: Ostensibly.

THE COURT: And consideration of dismissal of all of these other claims.

Mr. Kiefert, the way I see it is this original order of September 5th gets amended to change Dr. Berdann's itemized amount to $511, and that's the only change that's authorized.

MR. KIEFERT: The reason why the amount of permanent, temporary total disability changed was that we had carried it through as far as the revision up to today as far as --

THE COURT: We don't need to carry it up through today. He's not entitled to that. He's only entitled up to through the trial date of September 9th, which the court

denied your continuance.

You need to explain to your client -- Mr. Meade, you seem to be an intelligent man, try and just listen to me for a second. You failed to appear in court on the 9th of September for trial. You failed to appear in court for trial -- in court on the 5th of September for a settlement conference as ordered by this court.

MR. MEADE: Can I give a reason?

THE COURT: No. Those matters have already been heard and decided. They are not before the court to be reconsidered. As a result, the posture of your case is a real simple one, either you agree to enforce the settlement agreement entered into on the 5th of September with the sole modification of increasing Dr. Berdann's bill from $246 to $511 and all other respects accept this as a full and final settlement, or this court will dismiss your case for failing to appear in court for trial on the 9th of September. That's it. You are in the proverbial spot between a rock and a hard place.

MR. MEADE: I will appeal the case then.

THE COURT: There's nothing to appeal.

MR. MEADE: Yes, you are making a wrong decision. You're not giving me a chance. You don't know what happened about this whole thing.

THE COURT: Mr. Meade, this was a settlement that

was agreed to upon your demand and the concessions made by the defendant.

MR. MEADE: But I wasn't there.

THE COURT: You weren't there, and you were in contempt of court for failing to be there. You're in contempt of court for failing to appear for the -- frankly, you're in contempt of court today for failing to appear in court 30 minutes --

MR. MEADE: Did Miss Dillard tell you I couldn't make it because of the traffic?

THE COURT: Sir, you called at ten minutes to 12:00 from the Pentagon to say you couldn't be here until 2:00. It's not two hours. I have grown up in this area and lived here all of my life. It doesn't take two hours to get from the Pentagon across the Wilson Bridge.

MR. MEADE: I don't take that direction.

THE COURT: I don't care. If you chose to go by way of Gaithersburg to get here, that's your problem, not mine. You were ordered to be here at 1:30. If you don't show up, you're in contempt of this court.

MR. MEADE: That's why I called. I can't determine this kind of weather. I don't have good tires and stuff.

THE COURT: Not my problem.

MR. MEADE: I told Mrs. Dillard I couldn't make

it.

THE COURT: This case was held at 1:30, I believe, to the agreement of counsel instead of having it set as it should be at 9:00 this morning.

MR. MEADE: I didn't know it was going to snow today. Who knew that in advance?

THE COURT: I was here at 9:00 this morning and so was all of my staff, snow or not snow. That's the way courts operate. We don't just stay in bed because there is a little bit of bad weather out there. The public must be served, and we are here on time to serve them.

Your particular problems do not interest me. Your particular concern that you get special treatment to get an extra half hour to come a distance which can be traveled in 45 minutes to an hour does not interest me. You offered no excuse other than my guess that you really wanted to just go out to lunch before you came here.

MR. MEADE: I swear. I have not been to lunch yet. I'm hungry.

THE COURT: Mr. Meade, not my problem. You're the plaintiff. It is your obligation to pursue your claim, not mine, to protect your interest, although I have been bending over backwards to do precisely that.

This settlement agreement was ordered by this court on the 9th of September to be effectuated no later

than the 9th of October. Today is the 9th of January, and it still has not been signed, and you still have not managed to get yourself into court on time to take care of these matters.

Mr. Kiefert has diligently pursued your case in this court and attempted to keep it alive in spite of the defendant's pressing demand that I dismiss it for a failure to prosecute in a timely fashion as required by the court.

Now, you can do one of two things, you can accept the settlement as previously agreed to and authorized, or I can dismiss this case with prejudice. I would suggest strongly that you talk to your attorney.

MR. MEADE: May I make one statement to you?

THE COURT: This court will stand in a ten-minute recess while you have that conversation.

(Recess had.)

THE COURT: Back on the record.

Mr. Kiefert, how are we doing?

MR. KIEFERT: Your Honor, just one thing I wanted to get clear on his behalf.

THE COURT: Maybe I better wait a second.

MR. KIEFERT: Why he thought he would be able to talk. All of the other settlement conferences would be in chambers. I told him this settlement conference would be similar to the others where we would sit in the judge's

office and discuss things. That's why he thought he would be able to speak more than he has been allowed.

THE COURT: I understand that. I wanted it to be made clear that there was a pending motion to dismiss and that was really what was causing us to be up here in the courtroom. Okay.

MR. KIEFERT: Your Honor --

THE COURT: How are we doing?

MR. KIEFERT: As far as the settlement itself, I want to on his behalf, Mr. Meade would like to put on record his reasons for why he wants the changes.

THE COURT: I will be happy to hear from him then.

MR. KIEFERT: His position at this point is that he does not want to accept the settlement as written.

THE COURT: Okay.

Well, then in that case I need to hear why. Well, Mr. Meade, let me ask you a question.

MR. MEADE: I apologize the way I'm acting. I'm upset. I thought this was informal.

THE COURT: Mr. Meade, let me ask you a question, do you want to tell me why you weren't at the settlement conference on September the 5th?

MR. MEADE: Yes. I have all of the reasons. I didn't practice. I thought it was informal.

MR. KIEFERT: Tell them about a recommendation.

MR. MEADE: I don't like to discuss that. I can't discuss private things, what happens at work. We had international crisis at that time, and I'm not supposed to discuss and I couldn't make it. I had talked to him the week before on the 26th when he had got the thing, and on the 27th we sat down for three hours and discussed what the settlement offers was going to be. Counter --

MR. KIEFERT: She's asking about September 5th.

THE WITNESS: I have to lead up to it. I told him at that time I couldn't see him the following week when he told me there might be a hearing on the 3rd.

THE COURT: Today.

MR. MEADE: I told him I know in advance I can't see you next week, we have something major going on. That's when we had to do something militarily. I told him in the advance so I won't be able to see him. I asked him to see if he could continue that. I had no idea Judge Ahalt said I had to be there on the 5th existed until I read his dismissal order on the 26th. I did not know about this until the 27th.

THE COURT: Why were you not present on September 9th for the trial date?

MR. MEADE: On September 9th, that was still involved in the same information. We were doing -- I don't

want to say it here, I don't want to make it on record. I can't really say what we're doing. We had to back up what we were doing, what has already happened, and I had to confirm it. I'm a project manager. I can't do any more. It is a top secret. It can't be on record, what I say, that plus Mr. Kiefert knew I can't be there on Monday's and Friday's because those are my meeting days. We decide what we do on Monday's and Friday's, what happens and we analyze it. On this case Monday's major problems. What we did on Friday, we did on Monday that week.

THE COURT: Mr. Meade, are you able to work at your current occupation on full-time basis?

MR. MEADE: Yes, because I do reports all of the time and stuff that doesn't involve --

THE COURT: So, the only thing you can't do is this part time job that you used to have at Pep Boys?

MR. MEADE: It's affected me in other fields. I can't advance in my position because of my injury. I'm still having to wear this. I cannot jog. I can't do karate, kung fu, any of the other things I have a black belt in. At my job I have to be able to do that. I cannot do that because of this injury. So I'm a black belt in all three, kung fu, tai chi. This wipes out all of these. I cannot use all of those. I can only use tai chi up front.

THE COURT: What level are you in the federal

government?

MR. MEADE: Pardon?

MR. KIEFERT: What grade level are you?

MR. MEADE: I'm a 7.

THE COURT: Okay.

MR. MEADE: Can I explain a little bit more?

THE COURT: Just wait. Hold on. Just have a seat right there. I'm going to take it at your desk. Just have a seat.

(Pause had.)

THE COURT: All right. Let's go back on the record.

MR. MEADE: May I let you read this? I was going to read this to you today. You can see the reason. I was told by Mr. Kiefert there was a continuance on that today. That's why I thought my case wasn't denied. This is why there's a big confusion here between us. You didn't give me a chance to read that. If you read all of that, you'd know what happened, why there had been continuances and stuff.

THE COURT: Okay. Okay.

MR. MEADE: Can I state what happened that day on the 9th? Tell you a little bit more about the 9th? I think it is important.

THE COURT: It doesn't make any difference. The

problem is, Mr. Meade, that your position with regard to this national emergency was not able to be substantiated in court on that date, and unfortunately, that is just a risk that occurred, but you were in a situation where your case had already been heard once before the Worker's Compensation Commission. You're on appeal from that. We were scheduled for a jury trial. There had been a settlement conference based on your demands which you said you had discussed with Mr. Kiefert. You had also discussed with him before he went in to the settlement conference what your position was. You just told me that, that you also could not be present in court on the 5th and the 9th of September, but nevertheless you and Mr. Kiefert discussed your position with regard to the settlement. You just said that. You just said that.

MR. MEADE: Can I just make one clarification?

THE COURT: No. You just said that. Now, listen to me. You are telling me your position, and I appreciate that, but the defendant also has a position, and their position is that every time you didn't show up they showed up any way. And they negotiated in good faith with your attorney, they negotiated in good faith with your attorney based on the instructions that you gave to your attorney frankly a very fair and generous settlement of a marginal case. Your case is one in which if it went to the jury you

were not likely to receive any more than what is offered in this settlement. It's a very good settlement.

If you were to go to a trial before this court, you would have had to bring in as witnesses and pay for their time in court each and every one of these doctors in order to get their business opinion. You might be able to cut down some of the doctors if some of them looked at each other's records. You might be able to narrow it down. You'd still be more likely than not to have to call at least one or two of these doctors and pay for their time in court. That's a gamble you take and that money is not reimbursed to you in any way.

The only thing that would happen is if the jury decided that this was in fact an accidental injury suffered at work in the course of employment, the issue before them was just that. Then, you'd have to go back to the Workers Compensation Commission to again litigate the question as to the causal connection of each and every one of these medical bills and the nature and extent of any permanent partial disability. That would all have to be litigated all over again before the Workers Compensation Commission.

What's been offered here is an opportunity for you to save all of those additional expenses and additional hearings and an opportunity to settle this whole thing in one lump sum and be done with it.

MR. MEADE: Well --

THE COURT: So what the defendant gives up is the opportunity to drag this out and to drag out their payments to you and to cause you to expend all of these additional expenses, and they're willing to give that up in order to be done with it now. What you give up is the possibility of some more money than what's being offered to you now. But what I'm telling you is that that additional, that chance of additional money would come at a definite cost because it would be the definite cost of putting on your case at trial for the accidental injury and your possible additional cost for the additional hearings. Do you understand?

MR. MEADE: I'm willing to do that.

THE COURT: It's too late for you to be willing to do that. All I'm trying to do is telling you why I am going to grant the motion to enforce this settlement. I am trying to get you to understand that this is a reasonable process, that the denial of your request for continuance on September the 9th is not going to be reversed. That is a matter solely in the discretion of the trial court. It's never reversed on appeal in the absence of a clear abuse of discretion, which I can tell you in my view has not occurred. I'm sure Mr. Kiefert would tell you the same thing.

MR. MEADE: Can I speak?

THE COURT: So you're in a situation where you're not going to get a trial date, so you've got one of two choices: Either I dismiss your case in its entirely for your failure to appear in court on September the 9th when the continuance request was denied, or I will grant the request to enforce the settlement order that was submitted by Judge Sothoron on September the 5th and signed off on by both counsel with the amendment of the one doctor's bill from $246 to $511. You can have it either way.

If you want to appeal from my dismissal of the case, that's fine. I just can't tell you that your likelihood of success on appeal is very great, but if you'd like, I will go ahead and enter the order dismissing your case with prejudice, and you can then seek to appeal that at additional expense and cost, or I will enforce the settlement and you will walk away today with a considerable sum of money in your pocket.

MR. MEADE: Let's see -- could I have time to think about this?

THE COURT: I think I already gave you 25 minutes to talk about this with your attorney.

MR. MEADE: I have got to talk this over with my other lawyers involved in other cases.

THE COURT: What other cases?

MR. MEADE: They're asking this settlement to drop other cases which is a lot more money.

THE COURT: We're talking about those other cases against?

MR. MEADE: Just one of them is much bigger than this one.

MR. KIEFERT: I'm not involved.

MR. MEADE: EEOC, ADA and several other lawsuits.

THE COURT: Sir, what's the basis of your ADA complaint?

MR. MEADE: Well, I don't want to discuss that here. That's discussed in ADA court.

THE COURT: If it's being settled here, I need to know. What is it?

MR. MEADE: ADA is based on the age discrimination, that's one. There is three different ones.

THE COURT: ADA is American Disabilities Act, correct?

MR. MEADE: Right.

THE COURT: Did you have any disability before the accident?

MR. MEADE: I had a bad right eye. That has nothing to do down here with my back. That's why I have got to wear the dark glasses. I have a bad right eye.

THE COURT: All right. Mr. Kiefert, when you

signed this, had you discussed the dismissal of the other claims with the other attorneys?

MR. KIEFERT: He hasn't told me who the other attorneys are, Your Honor.

THE COURT: How did you agree to dismiss those other cases?

MR. KIEFERT: He said he would.

THE COURT: He said he would?

MR. MEADE: No, I didn't. Here's the problem, Your Honor, I didn't give him approval to accept anything that day.

THE COURT: Sir, excuse me. Mr. Kiefert, do you have some correspondence with your client in this regard?

(Counsel and Plaintiff confer.)

THE COURT: That's off the record. That's between the two of them.

Let's go back on the record. Mr. Meade, let me explain something to you.

MR. MEADE: Can I show you this?

THE COURT: Number 3 on this order entitles you to a payment of $500 for a pending neurological consultation that to date you still have not had.

MR. MEADE: It's more than that. No way it was $500. It's way up there.

THE COURT: How much is the neurological?

MR. MEADE: The minimum is $7,900. Now, they're telling me $24,000. It's way up there.

THE COURT: Mr. Meade, you need to go through your health insurance to get that stuff.

MR. KIEFERT: If I can explain what happened in front of Judge Sothoron. We did not have a figure for the neurological consultation when we went in on September 5th. It hadn't happened. Judge Sothoron wanted to put a number, he knew the doctor's number in Greenbelt, and there was a call placed and the doctor said that's what I charge for a neurological consultation.

THE COURT: Mr. Meade is now including in that probably an MRI and a whole bunch of other tests that there is no indication from any of the treating orthopedists for the first two years that they were even necessary. We're talking about a neurological consultation that is being asked for by a general family practitioner after two years of treatment by various orthopedists, is that correct?

MR. KIEFERT: Yes.

THE COURT: Mr. Meade, I'm telling you there is no way that either this court, the Workers Compensation Commission or any jury would have allowed that. So the fact you got $500 in there for that is really a bonus because it's just gravy. There is nobody on the face of this earth that would find that to be medically necessary,

which is the legal requirement. It must be medically necessary for you to have that neurological consultation. The neurological consultation has never been requested by any of the orthopedic surgeons that you have been to, and you indicated to me that you have been to a number of them. Orthopedists routinely refer to neurologists if there is something that they feel is not an orthopedic problem but a neurological problem.

Now, I'm telling you you can either accept the payment as a full and final settlement from the defendant or I'm dismissing the case and you've got five minutes to figure this one out.

MR. MEADE: Can I show you?

THE COURT: No, this is the question sir, do you want the money or do you want your case thrown out of court?

MR. MEADE: I want to appeal the case.

THE COURT: No, no, no, here's your question. Do you want the money or do you want the case thrown out? That's the only question I'm deciding here today.

MR. MEADE: I will sustain from answering that because I'm appealing.

THE COURT: In that case your case is dismissed.

MR. MEADE: I'm going to appeal.

THE COURT: Case dismissed with prejudice.

MR. MEADE: I'm going to appeal it. Don't worry about it.

THE COURT: You go right ahead, sir.

Good luck to you, sir.

MR. HAYNES: Your Honor, I think I submitted an order with my motion. Is that sufficient for the court?

REPORTER'S CERTIFICATE

I, Mary Kay Shultz, an Official Court Reporter of the Circuit Court for Prince George's County, Maryland, do hereby certify that I stenographically recorded the proceedings in the matter of Petition of Robert E. Mea versus Pep Boys in the Circuit Court for Prince George's County, Maryland, Civil Action Law No. 94-05930, on January 9, 1997, before the Honorable Sherrie L. Krauser, Associate Judge.

I further certify that the page numbers one through thirty-three constitute the official transcript of the proceedings as transcribed by me from my stenographic notes to the within typewritten matter.

In Witness Whereof, I have affixed my signature this 21st day of February 1997.

MARY KAY SHULTZ
OFFICIAL COURT REPORTER

IN THE CIRCUIT COURT FOR P NCE GEORGE'S COUNTY, MARYLAND

ROBERT MEADE Plaintiff	:	
vs.	:	CAL No.94-05930
PEP BOYS Defendant	:	

ORDER OF COURT

The Court having been informed that the above referred to matter has been settled, it is, September 5, 1996, by the Circuit Court for Prince George's County, Maryland,

ORDERED, that all claims are hereby dismissed with prejudice and the case is closed statistically, based upon the following terms of settlement:

1. Employer/Insurer will pay, pursuant to Medical Fee Guide, the following medical bills for treatment causally related to the alleged accident of September 13, 1993:

Dr. Pour	$1,300.00
Dr. Copeland	80.00
Dr. Ghovanlou	175.00
Dr. Pabla	1,275.00
Dr. Pushkin	300.00
Dr. Berdann	246.00
Dr. Sakoloff	4,523.50
(pending receipt of reports and bills)	
Dr. Price	185.00
Dr. Meyer	175.00

2. Employer/Insurer will reimburse the Claimant for prescriptions causally related to the alleged accident of September 12, 1993 in the amount of $4,455.46, reimburse the Claimant $800. for the MRI performed on December 22, 1993, and reimburse the Claimant for lumbosacral wraps in the amount of $65.90.

3. Employer/Insurer will pay the Claimant $500. for estimated cost of pending neurological consultation.

4. Employer/Insurer will pay the Claimant $2,500. in consideration of any permanent disability arising from the alleged accident of September 12, 1993.

5. Employer/Insurer will pay the Claimant $5,000. and, in consideration thereof, the Claimant agrees to a full and final settlement of his worker's compensation claim arising from the alleged accident of September 12, 1993, and, in addition, the Claimant agrees to release and/or dismiss any other claims, lawsuits, or other legal actions against PEP Boys, or its insurers, regardless of whether such action has been filed or not, including but not limited to any claims for faulty engine repair, EEOC and ADA claims, etc. Claimant also agrees to resign from any employment relationship with PEP Boys and to sign any appropriate release encompassing the terms of this paragraph.

6. This is a full and final settlement of the Claimant's worker's compensation claim arising from the alleged accident of September 12, 1993, and is subject to approval by the Maryland Worker's Compensation Commission.

Richard H. Sothoron

RICHARD H. SOTHORON, JR.
Judge

Stephen H Keifert

STEPHEN KEIFERT, Esquire
Attorney for Plaintiff

Stan M. Haynes

STAN HAYNES, Esquire
Attorney for Defendant

Supreme Court, U.S.
FILED
MAY 25 1999
CLERK

No. 98-1672

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

ROBERT E. MEADE,

Petitioner,

v.

PEP BOYS, MANNY, MOE & JACK, INC., et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

ROBERT E. MEADE
102 Wallace Avenue
Brooklyn-Curtis Bay
Brooklyn Park, Maryland 21225
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Corrections to Respondents' Statement of Facts

In their opposition to the petition for writ of certiorari, the Respondents, Pep Boys, Manny, Moe & Jack Inc. and Traveler's Indemnity Company have made incorrect statements as well as leave information out to basically confuse the facts and the legal argument. That is why the Petitioner must clarify these statements.

Under their Statement of Facts, the Respondents stated "The Petitioner worked part-time, one weekend afternoon a week, for Pep Boys..". This is not correct. The Petitioner worked at Pep Boys, part-time, for one day a week , which included at least working approximately 9 ½ to 10 ½ hours straight without breaks, lunch, and dinner. In addition, when the manager was away, the Petitioner was required to work Saturday nights plus Sundays. This amounted to far more than the Respondents admitted to the Worker's Compensation Commission so that the Commission would look at it as an "insignificant" amount of hours worked by the Petitioner. The amount of hours can be verified through pay stubs, which the Petitioner would have presented if he had been allowed to be heard by the trial court.

The Respondents then continue to change the wording of the Commission's Order dated March 16, 1994 by stating "and that his alleged disability was not causally connected to his alleged injury". But rather the Order really states "and finds that the back condition is not the result of the alleged accidental injury". The Respondents should have referred to the copy of the Commission's Order that was supplied by the Petitioner in his Petition for Writ of Certiorari. The Commission made its decision without access to causal connection letters and doctor reports from the Petitioner's long-time family physician and other reputable physicians. This was a major error made by the Commission.

The Respondents state that "The case was scheduled for a settlement conference on October 12, 1994, and for trial on July 20, 1995". They failed to mention that the settlement conference was originally scheduled for September 15, 1994

but Haynes, the Respondents' attorney, requested a continuance alleging that he was not properly notified of the settlement conference date. The Court granted the continuance and it was rescheduled for October 12, 1994. On October 12, 1994, the settlement conference took place and the Respondents offered the Petitioner $1,000.00 to settle with a stipulation that he had to resign from Pep Boys immediately . They had refused to return the Petitioner to work until this settlement conference took place. The reason being that they intended to make it one of their demands in the settlement that the Petitioner not return to work at Pep Boys. The $1,000.00 would not have even covered the cost of the medication already used up to October 12, 1994. Petitioner did not accept the settlement because it was ridiculous to offer such a small amount of money for a large amount of prescription and doctor bills that had already been accrued since his injury and will accrue since he is still injured. This was the first settlement offer that Haynes and Jean Miller, of Traveler's Insurance, made to the Petitioner and they considered it as a fair and generous offer.

Once again, the Respondents falsely accuse the Petitioner of deliberate misconduct concerning his continuances which were entirely justified because of medical disabilities in order for them to justify their Motion to Dismiss. As discovery proceeded, the Court granted two continuances to the Petitioner and one to Employer/Insurer. The Employer/Insurer was granted a continuance because of lack of notice. The Petitioner was granted two continuances which were entirely justified because of medical disabilities. One continuance was for the Petitioner who suffered from an accidental mixing of two medications that had adverse effects if taken together.

With respect to the September 5, 1996 conference, as noted by the trial Court, and commanded by Maryland Rule 1-331, "{t}here is no requirement that the plaintiff appear at a pretrial conference unless ordered by a court to be present". Respondents contend that the court's memorandum of August 26, 1996 required the Petitioner to be personally

present at the September 5, 1996 conference. However, the August 26, 1996 memorandum actually refers to two concurrent follow-up conferences: a "settlement conference" and a separate "scheduling conference". The memorandum requires the Petitioner to be present only at the "scheduling conference". Apparently, without any docketed memorandum, the "settlement conference" was re-scheduled for September 5, 1996. However, it was Kiefert's, Petitioner's former attorney, understanding that the Petitioner was not required to be present because the "scheduling conference" was not re-scheduled. The Petitioner was never told he had to personally appear on September 5, 1996 and the Court should be wary of imputing any such obligation on him in view of the apparent confusion of counsel and the ambiguity of the Court's memorandum. He knew nothing about the Court's memorandum and the Petitioner's continuances were entirely justified.

This is not a case involving the type of deliberate and pervasive misconduct required to justify granting a Motion To Dismiss. See Hillig v C.I.R. 916 F 2d at 175.

> "A dismissal with prejudice is a harsh sanction which should not be invoked lightly in view of of sound public policy of deciding cases on their merits; against such policy, district court must balance considerations of sound judicial administration, applying four criteria: degree of personal responsibility on part of plaintiff; amount of prejudice to defendant caused by delay, presence or absence of a drawn out history of deliberately proceeding in a dilatory fashion; and effectiveness of sanctions less drastic than dismissal" Fed. Rules Civil Procedure Rule 41 (b), 28 U.S.C.A.

Regarding what took place on September 5, 1996, the Respondents incorrectly state "The Petitioner's attorney did present to Judge Sothoron, who presided at the conference, a demand letter based on conversations with his client,

indicating terms of settlement that the Petitioner would accept". This is not a correct statement. The Respondents refer to their Apx. 2 which is not a demand letter but instead is a settlement agreement reached without Petitioner's knowledge or approval. The Petitioner's attorney did not present a demand letter to anyone. They further incorrectly state "At the conference, counsel prepared and signed a settlement agreement, which was embodied in an Order of Court, signed by the presiding judge and both counsel". What really occurred, as told to the Petitioner by Judge Sothoron, was that Haynes did all he could to persuade Judge Sothoron to formalize the settlement offer which he and his client, Jean Miller, wanted so that the Petitioner would think it was legally binding on him since it would appear as a formal court order from Judge Sothoron. Judge Sothoron, with the insistence of Haynes, had his secretary write their proposed settlement offer as they were stating it and type the settlement offer of September 5, 1996, which was in the form of a court order and signed by all three, without the Petitioner's knowledge or approval.

The Respondents continue to make incorrect statements. They state, "On September 9, 1996, the case was assigned to Judge Krauser for trial". Throughout the Petitioner's case, Judge Ahalt was actively involved in the Petitioner's case and was assigned to handle the trial. However, on the trial date, Judge Ahalt was presiding over a jury trial that was extending late in the afternoon and, upon suggestion of Haynes to Kiefert, another judge was sought out to hear the case that day. The Respondents go on to state "Counsel for the Petitioner stated that his client had advised him that he was involved in the "Iraq business" and that the Petitioner "can't be here for national security reasons". Kiefert unwisely engaged in an over-colorful extrapolation of the facts that the Petitioner described to him about his work situation.

In addition, the Respondents state "At the expiration of thirty days, having received no indication that the Petitioner accepted the September 5, 1996 settlement agreement, the

Respondents filed a Motion to Dismiss the Petitioner's appeal". This is incorrect. On the evening of September 5, 1996, the Petitioner met with Kiefert and rejected the settlement. On September 6, 1996, the Petitioner, through a friend, informed Judge Sothoron's office that he had rejected the settlement offer.

At the end of their Statement of Facts, the Respondents mention the Motions filed by the Petitioner. The Petitioner filed the Motion to Stay Enforcement of the Mandate in order to give the Court time to answer the Petitioner's Motion To Correct the Record.

Corrections to Respondents' Argument

THIS CASE DOES PRESENT AN ISSUE WHICH IS APPROPRIATE FOR REVIEW BY THIS COURT.

First, the Respondents try to convince the Supreme Court that the Petitioner's Petition for Writ of Certioari was not timely filed. This is not the first time the Respondents have attempted this maneuver. They have also argued this in other stages of appeal. The Petitioner did not "invent a Motion for Reconsideration" as the Respondents falsely state. The Respondents need to be reminded that the Maryland Court of Appeals accepted Petitioner's Motion for Reconsideration. The Petitioner did file his Petition to the Supreme Court timely, within the required ninety (90) days.

The Supreme Court has jurisdiction to issue a writ of certiorari in this matter. The Petitioner's case is a case involving constitutional principles. Therefore, review by this Court is appropriate under 28 U.S.C. § 1257 (a) which allows this Court to review

> "{f}inal judgments or decrees rendered by the highest court of the State in which a decision could be had....where any title, right, privilege, or immunity is specially set up or claimed under the Constitution".

Judge Krauser, by dismissing the Petitioner's case, did not afford him, as an injured worker, due process under the law. Due process is a constitutional mandate which provides that no person shall be "deprived of life, liberty, or property, without due process of law". The fundamental requirement of due process is the opportunity to be heard. It was an error of the Court not to weigh genuine disputes of material facts. These issues could not be resolved by dismissal. Judge Krauser's refusal to listen to anything else the Petitioner had to say was an abuse of discretion. A reviewing court should have applied a "de novo" standard of review of the Workers' Compensation Commission findings and it did not.

The Supreme Court should review the Petitioner's case in light of the structural and procedural errors of the Circuit Court of Maryland. From the beginning, the Circuit Court of Maryland proceeded in a manner unlike other worker's compensation decisions which are presented for review. The Petitioner contends that Haynes, the Respondents lawyer, sought every opportunity to get the court system to deny the Petitioner his day in court where there would be a review of genuine material facts as well as the law. An example of this would be, the Respondents, in their Table of Citations, inject two Maryland Rules 8-303 and 8-603 (d) dealing with procedures in dismissing cases.

At the beginning of the Petitioner's case, Kiefert, filed a Motion for Sanctions against the Respondents for interrogatories and subpoenaed information. The Court never acted on these Motions and Haynes and the Respondents were able to proceed without these sanctions being imposed on them. This resulted in their keeping vital information from the Petitioner which hindered his case. On September 5, 1996, a settlement was signed by Haynes, Kiefert, and Judge Sothoron without the Petitioner's knowledge or approval. As did Haynes previously, he was again trying to have the Petitioner accept an unfair settlement offer. The Petitioner could not accept the settlement offer because it did not include leaving his back injury open and he would have

had to agree not to proceed with other claims against Pep Boys and Traveler's Insurance.

On September 9, 1996, instead of starting the trial, Judge Krauser proceeded to discuss a settlement offer that had already been rejected by the Petitioner because it did not offer him a just settlement. On January 9, 1997, Judge Krauser, instead of allowing the Petitioner to speak and present his settlement offer, denied him the opportunity to be heard. She forced the Petitioner to either accept the settlement negotiated on September 5, 1996, as modified by her, or have his case dismissed. The Petitioner did not accept the settlement and Judge Krauser granted the Respondents' Motion To Dismiss. On May 22, 1997, at a hearing on the Petitioner's Motion To Reconsider, Judge Krauser would not let the Petitioner speak and then denied the Motion. The Court should have allowed him to speak since he appeared pro se. The Petitioner was not able to find any other case that proceeded in this manner.

Judge Krauser, the Circuit Court Judge who heard and decided the Petitioner's case, had the opportunity to sit in on some of the cases in the Court of Special Appeals. She worked on a case at the same time that the Petitioner's case (No. 1562, September Term, 1997) was before the Court of Special Appeals. The reported opinion in the Court of Special Appeals of Maryland of the case Jacklyn Kay Heineman, et al. v. Julie W. Bright, et al. (No. 1557, September Term, 1997) was written by her.

The Supreme Court must decide some important issues in the Petitioner's case. Can we let the courts take away our rights to be heard and reject a settlement if it only benefits the employer, Pep Boys, and the Insurance Co., Traveler's, and not the party who is still injured and still suffering? Does a court have authority to suddenly pull a case away from a jury and force a settlement on its own terms to manage its caseload?

> "When we allow the desire to reduce Court congestion to justify the sacrifice of substantial rights of the litigants in cases like

> this, we attempt to promote speed in administration, which is desirable, at the expense of justice, which is indispensable to any Court system worthy of its name". Link v. Wabash Railroad Co. 370 U.S. 626.

The trial court's decision to dismiss the Petitioner's case and the Court of Special Appeals' decision affirming the trial court were both errors. Judge Krauser could have imposed a less drastic sanction on the Petitioner which would have been more appropriate and still allow him to have a jury trial as he had requested from the beginning of his case. It would have been in the interest of justice to allow this case to proceed. There is nothing on record or in Judge Krauser's order to show that she contemplated any sanctions but the most severe one.

Respondents state " In its review of the trial court's decision dismissing Petitioner's case, the Court of Special Appeals of Maryland noted that the case was dismissed based on counsel's inability to prosecute Petitioner's case in light of Petitioner's unexcused absence from court on the day of trial". The Court of Special Appeals does not rely on the circuit court's reason for dismissing the Petitioner's case. Judge Krauser explained to the Petitioner, at a hearing on May 22, 1997, that she had imposed a sanction of dismissal on the Petitioner for not being present on September 9, 1996.

In response to what the Respondents state about what the Court noted concerning Kiefert not being able to prosecute the Petitioner's case, the Petitioner states that Judge Krauser, after denying Kiefert's request for a continuance, should have begun the trial. The Petitioner's presence was not necessary at the beginning of the trial. Kiefert, if given a chance by Judge Krauser, would have begun the trial with items such as asking for sanction hearings on subpoenaed information and interrogatories and arguing for a twelve person jury instead of a six person jury.

Judge Krauser failed to recognize that Kiefert never said that he would not go forward with the case in the Petitioner's absence.

CONCLUSION

For the foregoing reasons, as well as those urged in the petition, a writ of certiorari should be granted.

Respectfully submitted,

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Supreme Court, U.S.
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No. 98-1672

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

ROBERT E. MEADE,

Petitioner,

v.

PEP BOYS, MANNY, MOE & JACK, INC., et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

PETITIONER'S SUPPLEMENTAL BRIEF

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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 15.8 of the Rules of the Supreme Court of the United States, the Petitioner respectfully submits this supplemental brief in support of the Petition for Writ of Certiorari.

ARGUMENT

The issues presented in this petition need to be addressed since other litigants may be confronted with either accepting a settlement offer, which does not justly compensate them for their injuries, or have their case dismissed. There appears to be a conflict between the courts regarding the actions and limitations of the court in managing their caseload. There is no law which gives a court authority to suddenly pull a case away from a jury and force a settlement on its own terms, because the court is frustrated with the litigants or wants to relieve its caseload, as it did in this case. It cannot be conclusively determined from the record in this case how a jury would decide the issues that the court took it upon itself to resolve.

> "Under Maryland law, a trial court does not have the plenary power to force parties to engage in mandatory, binding alternative dispute resolution, no matter how desirable the court might consider settlement to be". Attorney General v. Johnson, 282 Md. 274, 439 U.S. 805 (1978).

The Petitioner wishes to advise this court of the following new cases and other intervening matters not available at the time of the last filing of his Petition For Writ of Certiorari. In the case, West v. West, No. 98-1767, the Supreme Court is being asked to resolve a similar issue as to

who may enforce a settlement. The Petitioner presents the following question for review:

> "Whether the Petition for Certiorari Should be Granted to Clarify Under What Circumstances a United States District Court May Summarily Enforce a Settlement Agreement When Disputes Exist With Respect to the Existence and/or Terms of the Agreement?" Petition for Writ of Certiorari, West v. West, No. 98-1767 page i.

This case involves the following:

> "The Parties Outline the Terms of a Proposed Settlement, Including Provision to Submit Disputes Regarding the Settlement to an Arbitrator. Stacey Asks the Arbitrator to Resolve a Dispute But Immediately Withdraws That Request and Insists That the Entire Case Proceed to Trial. The Arbitrator Nevertheless Proceeds to Consider the Dispute and Reaches a Decision. Stacey Now Decides the Arbitration was Proper and Moves for Enforcement of the Settlement and the Award. The District Court Ignores the Issues Related to the Settlement Agreement and Simply Confirms the Order of Arbitration. The Court of Appeals Affirms the District Court Decision". Petition for Writ of Certiorari, West v. West, No. 98-1767, pages 2-5.

The Petitioner, under his reasons for granting the petition on page 12, includes "summary enforcement of an alleged settlement is improper when there is a substantial factual dispute as to the terms of the settlement" and cites Murchison v. Grand Cypress Hotel Corp., 13 F. 3d at 1486.

However, there is a difference in the two cases. In West v. West, the assigned Arbitrator enforced the settlement. In the Petitioner's case, No. 98-1672, the circuit court judge, after making her own major changes, forced the Petitioner to either accept the settlement offer, which he had already

previously rejected or have his case dismissed, as a sanction for not being present at the September 9, 1996 trial even though his attorney was present and ready to proceed with the trial.

In another case Davis v. Syntex Laboratories Inc., No. 98-1313, one of the questions presented on page ii, question 4 in the Petition for Writ of Certiorari, is "Whether the trial court has the grant of authority to dismiss a cause of action as a sanction, when dismissal results in a denial of due process". This is a similar question presented by the Petitioner in case No. 98-1672 but with different wording. This case involves the following:

> "Petitioner filed the product liability suit complaining of injuries sustained as a result of taking a drug manufactured, designed, distributed, and marketed by the Respondents for the use of endometriosis in women. The Court ordered Petitioner to produce an expert report, explaining the causal connection between the drug and her condition. (App.4), within a limited time frame and early in the litigation. Upon Petitioner's inability to comply with said order, the trial court dismissed Petitioner's cause, with prejudice. (App.3)." Petition for Writ of Certiorari, Davis v. Syntex Laboratories Inc., No. 98-1313, pages 3 and 4.

In both this case and case No. 98-1672, the judges did not appear to consider alternatives to dismissal. Dismissal is a harsh sanction. The Petitioners' conduct is insufficient to support such a severe sanction.

The Petitioner in case No. 98- 1672, as the Petitioner in case No. 98-1313, was deprived of his day in court. " It is a fundamental tenet of American law that every individual is entitled to his or her day in court". Martin v. Wilks, 490 U.S. 755, 762 (1989). The Petitioner is still injured and his case should not have been dismissed because it deprived him of presenting his case before a jury where he could have proven his injury and asked for past, present, and future

compensation. "The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basis to our society". Joint Anti-Fascist Com. v. McGrath 341 U.S. 123, 168 (1951). "State courts in civil actions must afford to each litigant a proper opportunity to present his evidence". Saunders v. Shaw, 244 U.S. 317, 319 (1917) Cf. Western & Atl. R. Co. v. Henderson, 279 U.S. 639 (1929); Armstrong v. Manzo, 380 U.S. 545 (1965); Mullane v. Central Hanover, Bank & Tr. Co., 339 U.S. 306 (1950).

The Supreme Court, in reviewing this case No. 98-1672, should find "Where, as here, a possible due process violation is apparent on the particular facts of a case, we are empowered to consider the due process issue". Wood v. Georgia 101 S. Ct. 1097 (1981).

CONCLUSION

For all the aforementioned reasons, and those previously set forth within his Petition for Writ of Certiorari and his Reply to Brief in Opposition, the Petitioner respectfully urges the Supreme Court of the United States to grant his Petition for Writ of Certiorari and reverse the order of the Court of Appeals of Maryland.

Respectfully submitted,

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